SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION No. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ET AL., PETITIONERS,

vs.

ROBERT E. McADORY, AS SOLICITOR OF JEFFERSON COUNTY, ALABAMA, AND HOLT McDOWELL, AS SHERIFF OF JEFFERSON COUNTY, ALABAMA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

INDEX.

	Original	Print
Record from Circuit Court of Jefferson County, Alabama	1	1
Certificate of appeal	1	1
Organization of court (omitted in printing)	3	
Substituted petition for a declaratory judgment	4	1
Exhibit "A"—Excerpts from constitution of United Brotherhood of Carpenters and Joiners of America	26	24
Exhibit "B"—Affidavit of W. O. Hare (copy) (omitted in printing)	30	
Exhibit "C"—Affidavit of Sam Roper (copy) (omitted in printing)	44	
Exhibit "1-A" to affidavit of W. O. Hart—Constitution and Laws of the United Brotherhood of Carpenters and Joiners of America	49	30
Exhibit "1" to affidavit of W. O. Hare—Constitution of the American Federation of Labor	87	98

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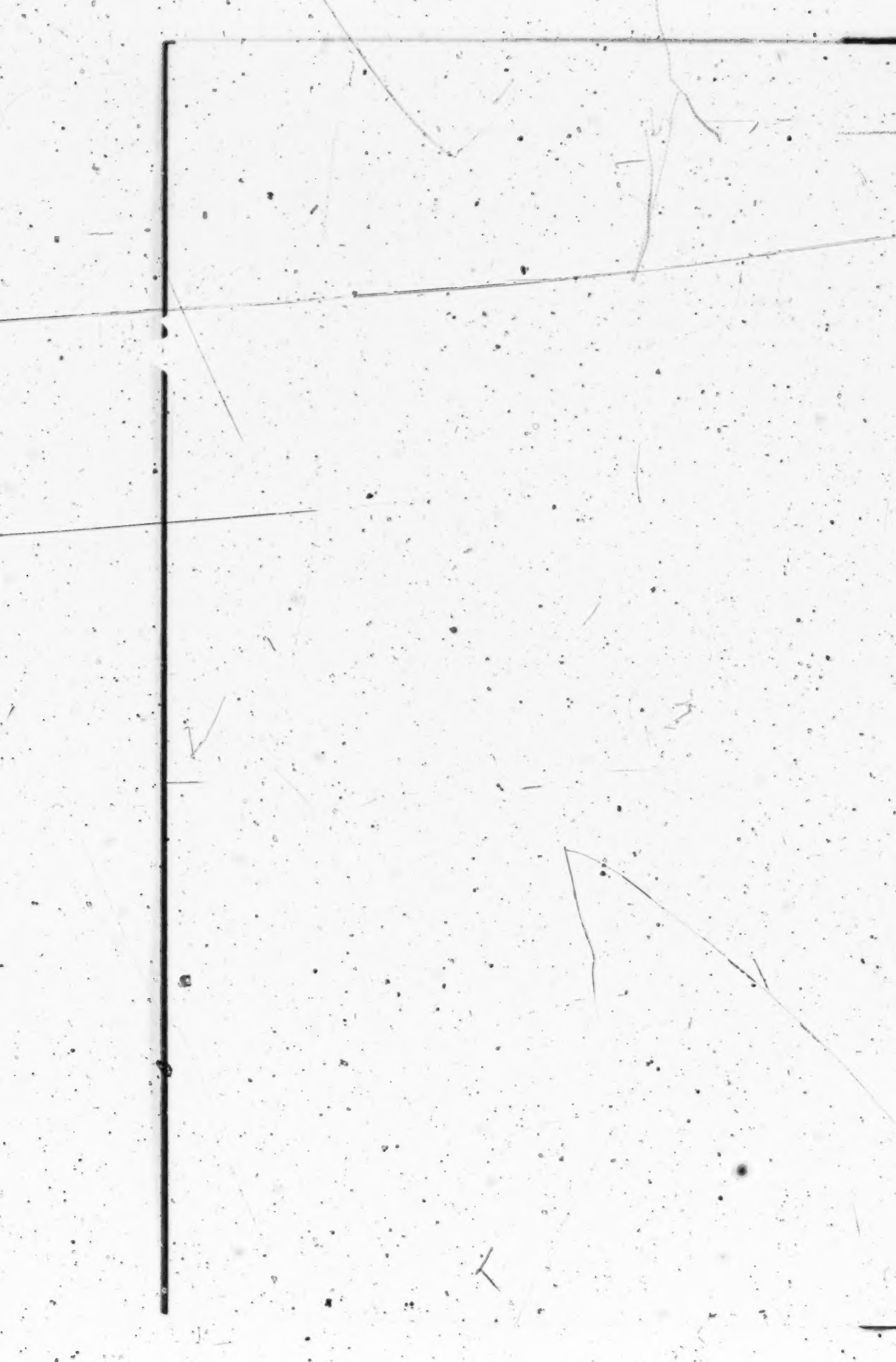
—4107

	Original	Print
Record from Circuit Court of Jefferson County, Alabama—Continued		
Substituted petition for a declaratory judgment—Continued		
Exhibit "2"—to affidavit of W. O. Hare—Constitution and By-laws of Alabama State Federation of Labor.	123	165
Exhibit "3"—to affidavit of W. O. Hare—Working Rules of Jefferson County and Vicinity Carpenters	137	189
Exhibit "D"—Affidavit of William Green (copy) (omitted in printing)	147	
Plea in abatement (omitted in printing)	173	
Motion to strike (omitted in printing)	174	
Demurrer (omitted in printing)	174	
Amendment to demurrer (omitted in printing)	178	
Motions to strike affidavits (omitted in printing)	181	
Answer	185	207
Minute entry re pleadings and trial	196	219
Minute entry and decree	198	220
Agreement to abridge record	201	224
Bill of exceptions	202	225
Motions to strike affidavits (omitted in printing)	202	
Note re evidence introduced	207	225
Agreement as to certain facts	208	226
Affidavit of W. O. Hare	209	227
Affidavit of Sam Roper	222	240
Affidavit of William Green	227	244
Letter from W. Emmett Brooks dated February 14, 1944	245	263
Administrative Bulletin No. 7 of the Department of Labor of Alabama	245	263
Administrative Bulletin No. 1 of the Department of Labor of Alabama	247	265
Administrative Bulletin No. 6 of the Department of Labor of Alabama	248	266
Affidavit of W. Emmett Brooks	248	267
United States Department of Labor Memorandum No. 7	250	268
Memorandum from Director of Alabama Department of Labor	269	290
Plaintiff's evidence	275	295
Testimony of W. O. Hare	275	295
B. E. Jones	278	298
T. L. Wilson	288	310
W. O. Hare (recalled)	293	315
T. L. Wilson (recalled)	295	317
Order settling bill of exceptions	295	317
Cost bond (omitted in printing)	296	
Citation (omitted in printing)	296	
Clerk's certificate (omitted in printing)	299	
Proceedings in Supreme Court of Alabama	300	318
Assignments of error	300	318
Cross assignments of error by appellees	301	319

	Original	Print
Minute entry of argument	302	319
Judgment	303	320
Opinion, Gardner, C. J.	305	321
Dissenting opinion, Thomas, J	339	353
Dissenting opinion, Brown, J.	341	355
Appellant's application for rehearing	345	358
Appellee's application for rehearing	346	359
Order denying applications for rehearing	347	360
Clerk's certificate (omitted in printing)	348	
Stipulation as to record	349	360
Order extending time within which to file petition for certiorari	352	362
Order allowing certiorari	353	362



[fols. 1-3]

IN CIRCUIT COURT OF JEFFERSON COUNTY, NINTH JUDICIAL CIRCUIT OF ALABAMA

CERTIFICATE OF APPEAL—August 17, 1944

I, O. L. Andrews, Clerk of the Circuit Court in and for said County and State, do hereby certify that in the case of Alabama State Federation of Labor, Local Union # 103 United Brotherhood of Carpenters and Joiners of America, American Federation of Labor, and United Brotherhood of Carpenters and Joiners of America, B. E. Jones, and W. O. Hare, Alabama State Federation of Labor, Appellants vs. Robert E. McAdory, as Solicitor of Jefferson County, Alabama and Holt McDowell, as Sheriff of Jefferson County, Alabama, Appellees, which was tried and determined in this Court on the 4 day of March, 1944, wherein judgment was rendered in favor of the Defendants, judgment as per separate paper this day filed, the plaintiffs prayed for and obtained an appeal to the Supreme Court of Alabama, to be holden in and for said State.

I further certify that on the 4 day of March, 1944, the Plaintiffs filed Security for costs of appeal to the Supreme Court of Alabama, and that Commercial Casualty Insurance Company is surety on said security for costs for all costs of said appeal.

I further certify that on the 10th day of March, 1944, notice of appeal was duly served on Lange, Simpson, Brantley and Robinson, Attorneys of record for said Appellee.

Witness my hand and seal of office this the 16 day of March, 1944.

O. L. Andrews, Clerk Circuit Court, Tenth Judicial Circuit of Alabama.

[fol. 4] IN CIRCUIT COURT OF JEFFERSON COUNTY

SUBSTITUTED PETITION FOR A DECLARATORY JUDGMENT—Filed October 13, 1943

By leave of the Court first had and obtained the plaintiffs substitute this their petition for a declaratory judg-

ment in this cause making their substituted petition for a declaratory judgment read as follows:

The plaintiffs, Alabama State Federation of Labor; Local Union No. 103, United Brotherhood of Carpenters and Joiners of America; American Federation of Labor; United Brotherhood of Carpenters and Joiners of America; and B. E. Jones, respectively, bring this, their petition against Robert E. McAdory, as Solicitor of Jefferson County, Alabama, and Holt McDowell, as Sheriff of Jefferson County, Alabama, for a declaratory judgment, and as a basis for the relief prayed for respectfully show unto the court the following statement of facts, to-wit:

1. The Alabama State Federation of Labor is an unincorporated labor organization composed of more than 200 voluntary, unincorporated local trade or craft unions whose members are citizens of the State of Alabama and Citizens of the United States of America. Several score of said local trade or craft unions are located and operated in Jefferson County, Alabama. All of the local trade or craft unions affiliated with the Alabama State Federation of Labor and the Alabama State Federation of Labor were organized and are maintained and operated for the purpose of dealing with employers concerning hours of employment, rates of pay and working conditions generally. The main, or principal, office of the Alabama State Federation of Labor is in Jefferson County, Alabama.

Each local trade or craft union affiliated with the Alabama State Federation of Labor has more than twenty-five members.

2. Local Union No. 103, United Brotherhood of Carpenters and Joiners of America, hereinafter referred to and called "Local No. 103" for convenience and brevity, is a local trade or craft union whose members are citizens of the State of Alabama and citizens of the United States of America. They reside and work in Jefferson County, Alabama and vicinity. Local No. 103 and the Alabama State Federation of Labor are not subject to the act of Congress known as the "Railway Labor Act", but a large number of labor organizations which are subject to said act of Congress known as the railway labor act, were at the time Act No. 298 hereinafter referred to was allegedly adopted and [fol. 5] allegedly approved, and are now, operating as

labor organizations in the State of Alabama in precisely the same way as the trade and craft labor organizations affiliated with the Alabama State Federation of Labor, and in precisely the same way as said Local No. 103. Usually the employees of Alabama employers engaged in a trade or craft comprise less than a majority of all the employees of their respective employers.

2-a. The American Federation of Labor is a voluntary, unincorporated labor organization composed of numerous voluntary, unincorporated associations of labor organizations, the said affiliated associations having an aggregate membership of several million persons in all the states of the United States, including the State of Alabama, and in Canada. All of said members are classified according to their various trades, crafts and industries into separate voluntary, unincorporated associations of labor unions. Each of them, and the American Federation of Labor, were organized and are maintained and operated for the purpose of dealing wtih employers concerning hours of employment, rates of pay and working conditions generally, and each having within its membership employees working in the State of Alabama. The American Federation of Labor maintains its principal office in the City of Washington in the District of Columbia.

2-b. The United Brotherhood of Carpenters and Joiners of America is a voluntary, unincorporated association of employees employed in the carpenter and joiner trades, and having many thousands of members in numerous states of the United States and in Canada, including numerous members in the State of Alabama. Its members are organized into autonomous subdivisions known as local unions, a number of which consist in whole or in part of residents of the State of Alabama who are employed within the State of Alabama. Said organizations were organized for the purpose of dealing with employers concerning hours of employment, rates of pay and working conditions generally, and having within its membership employees working in the State of Alabama.

2-c. The American Federation of Labor and the United Brotherhood of Carpenters and Joiners of America are not taxpayers in the State of Alabama, but the other plaintiffs in the case are taxpayers in the State of Alabama. The

Alabama State Federation of Labor was organized and is now maintained and operated for the purpose of dealing with employers concerning hours of employment, rates of pay and working conditions generally, and has within its [fol. 6] membership employees working in the State of Alabama. All members of a local union in Alabama affiliated with the American Federation of Labor are, by virtue of that affiliation memers of the Alabama State Federation of Labor, and members of the American Federation of Labor, and pay dues or assessments to each of said organizations separately and severally as the price of their membership in the respective organizations.

3. B. E. Jones is a resident of Jefferson County, Alabama and is over twenty-one years of age. He is a citizen of the State of Alabama and a citizen of the United States of America, and is a member in good standing of the United Brotherhood of Carpenters and Joiners of America. He had been a member in good standing in that organization for many years prior to the passage of Act No. 298 hereinafter referred to, and was a member of said organization at the time said act was alleged to have been passed.

4. The Alabama State Federation of Labor, Local No. 301, and B. E. Jones are each taxpayers of the State of Alabama and taxpayers in Jefferson County, Alabama.

5. Plaintiffs aver that in the 1943 session of the Legislature of Alabama there was introduced and allegedly passed, an alleged bill known as Act No. 298, sponsored by Senator Bradford and generally known as the Bradford Bill, entitled:

"An Act

To create a Department of Labor of the State of Alabama and to provide for its personnel, powers, functions, and duties and the performance thereof, to provide for the appointment by the Governor of boards of mediation, and to provide for their personnel, powers, functions, duties, and procedure, to regulate the activities and affairs of labor organizations and to require reports thereby, to make unlawful interference with the right to work or with the obtaining, use, or disposition of materials, equipment, or service, to regulate the exercise of the right to strike, to prohibit the col-

lection, receipt, or demand of money for the privilege of working, to prohibit executive, administrative, professional, or supervisory employees from becoming members in certain labor organizations, to probihit political contributions by labor organizations, to create civil liability and to establish civil and criminal penalties and remedies for the violation of this Act and to provide for the enforcement thereof, to make an [fol. 7] appropriation for the administration of this Act, and to repeal subsection (2) of Section 3, and subsection (3) of Section 3, and Section 28 of Title 26 of the Code of Alabama."

6. Plaintiffs are advised by counsel, informed and believe, and on such advise, information and belief, aver that said Act No. 298 above referred to is unconstitutional, null and void, and of no effect, in that same violates the constitution of the State of Alabama and the Constitution of the United States of America.

The provisions of the Constitution of the State of Alabama, the protection of which is now sought by the plaintiffs, and which it is averred are each separately and severally violated by said Act No. 298, are:

(a) Section 1, Article I, guaranteeing to the citizens of Alabama the right to life, liberty and the the pursuit of happiness, and providing that all men are equally free and independent.

(b) Section 4, Article I, guaranteeing freedom of speech.

(c) Section 5, Article I, providing that the people shall be secure in their persons, houses, papers and possessions from unreasonable seizure and searches.

(d) Section 6, Article I, providing that no person shall be deprived of life, liberty or property, except by due process of law.

(e) Section 35, Article I, providing that the sole object and legitimate end of government is to protect the citizen in the enjoyment of life, liberty and property, and when the government assumes other functions it is usurpation and oppression.

(f) Section 45, Article IV, providing that each law shall contain but one subject which shall be clearly expressed in its title.

The provisions of the Constitution of the United States of America, the protection of which is now sought by the complainants, and each of which separately and severally is violated by said Act No. 298, are:

(aa) The First Amendment, prohibiting abridgment of freedom of speech and guaranteeing that the people shall have the right to peaceful assembly.

(bb) The Fourteenth Amendment, which provides that no state shall make or enforce any law which would abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, lib- [fol. 8] erty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law.

(cc) Article I, Section 8, providing that Congress shall regulate commerce among the several states; and

(dd) Article I, Section 10, providing that no state shall make laws impairing the obligation of contract.

(ee) Article IV providing the Constitution and laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land; and

(ff) Amendment 9 providing the enumeration in the Constitution of certain rights shall not be construed to deny others retained by the prople, secured against abridgement by Section 1 of the 14th Amendment; and

(gg) Amendment 13 forbidding slavery or involuntary servitude within the United States; and

(hh) Amendment 4 of the United States Constitution providing the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, secured against State abridgment by Section 1 of the 14th Amendment.

(ii) Amendment 5 of the United States Constitution providing no person shall be compelled in any criminal case to be a witness against himself, nor be deprived of his life, liberty or property without due process of law, secured against State abridgment by Section 1 of the 14th. Amendment.

(jj) Amendment 6 of the United States Constitution providing that persons shall be informed of the nature and

cause of accusations made them secured against State abridgment by Section 1 of the 14th Amendment.

If plaintiffs are mistaken in their averments about said Act No. 298 being unconstitutional, null and void, then they are advised by counsel, informed and believe, and on such advise, information and belief, aver that Sections 7, 12, 13, 15, 16 and 17 of said Act No. 298, separately and severally violate each of the aforesaid sections of the Constitution of Alabama separately and severally and each of the aforesaid provisions of the Constitution of the United States separately and severally, and for that reason each of said sections 7, 12, 13, 15, 16 and 17, separately and severally, and unconstitutional, null and void.

[fol. 9] Plaintiffs aver that said Act No. 298 above referred to is void, unenforceable and unconstitutional, and of no legal effect whatsoever for the following reasons, to-wit:

(k) Said alleged statute purports to regulate the relations of employees and employers engaged in interstate commerce, producing goods for interstate commerce, and engaged in occupations affecting interstate commerce, and purports to regulate the activities of labor organizations, national in character, whose activities in the State of Alabama are incidental to their national activities, and purports to regulate local subdivisions of such labor organizations, the power to regulate interstate commerce being within the exclusive province of the United States Government within the meaning of Article I, Section 8, of the Constitution of the United States.

(l) Said alleged statute violates Article I, Section 10, and Section 1 of the 14th Amendment to the Constitution of the United States in that said alleged statute purports to impair, interfere with and modify the obligations and agreements mutually assumed by and among members, local subdivisions, officers and agents of labor organizations and by and between said organizations and employees and others. It impairs and interferes with the rights, privileges and immunities of said labor organizations and the members thereof to enter into and conclude agreements by and among themselves, by, with and through their mutual associations and with employers and others.

(m) Said alleged statute violates Article VI of the Constitution of the United States in that said alleged act is in conflict with the provisions of the National Labor Relations Act, Title 29, Sections 151 to 166, U. S. Code Ann., and in that said act is in conflict with and violates the public policy and law of the United States with respect to employees engaged in interstate commerce, or producing goods for interstate commerce, or engaged in occupations affecting interstate commerce, as laid down in Section 151 of said Code, and it is further in conflict with and violates and seeks to abrogate the rights and privileges conferred on all of such workers by Sections 157 and 158 of said Code aforesaid.

(n) The said alleged statute is in conflict with and violates the provisions of the Thirteenth Amendment to the Constitution of the United States in that it denies to workers in the State of Alabama the right to simultaneously cease [fol. 10] their employment with their employer except in special and exceptional circumstances, and by Section 12 denies to workers in the State of Alabama the right to refuse to work upon products handled under circumstances inimical to the welfare of such workers, and by Section 13 thereof denies to workers the right to cease their employment with their employer in connection with certain requests or demands set forth in said section, thus compelling all such persons as herein described to perform services for such employers against their will, contrary to such constitutional provision aforesaid.

(o) Said alleged statute deprives labor unions and the members of labor unions and the plaintiff labor organizations herein and the members of plaintiff labor organizations of liberty and property without due process of law, and specifically of the fundamental right of free speech and freedom of the press and the right to peacefully assemble guaranteed to them by the Constitution of the State of Alabama and the First Amendment to the Constitution of the United States, which is secured against abridgement by the states by the Fourteenth Amendment to the Constitution of the United States in the following particulars, to-wit:

(A) Said statute by its various sections, among others Section 13, forbids persons from ceasing work, refusing to engage in work, from giving publicity to facts, information and opinions with respect to a labor dispute and the advan-

tages and benefits of organized labor and to use peaceful persuasion and lawful publicity to induce others to engage in similar activities, to make known the provisions of the National Labor Relations Act and the bargaining rights of labor under said act and to exercise the inherent and fundamental right to associate and assemble and exchange information and opinions and to speak freely concerning the true and actual facts relating to labor unions and employers in any industrial controversy, except in compliance with unreasonable and unlawful limitations set forth in the said statute and in the said sections thereof.

(B) Said alleged statute by various sections, and among others by the terms of Section 7 thereof, forbids persons and groups of persons to assemble together and freely discuss their desires as to joining a labor union, and forbids persons or groups of persons from attempting to persuade others to join a labor organization or from otherwise giv-
[fol. 11] ing publicity to the advantages and benefits of joining a labor organization, to use peaceful persuasion and lawful publicity to enlarge the membership of a labor union and to make known the provisions of the National Labor Relations Act and the bargaining rights of labor unions under said act, and otherwise to exercise the inherent and fundamental right to speak freely and to state the true and actual facts relating to labor unions, or in any industrial controversy or otherwise to engage in the activities or to attempt to achieve the objectives and purposes of labor organizations as hereinabove set forth unless the said person or persons or the groups so assembling adopt certain rules and regulations governing its operations and decisions, activities and elections, pay certain fees to officers of the state, and file certain designated documents with the officers of the state as a prerequisite to the exercise of said constitutional rights.

(C) Said alleged statute by its various sections is an arbitrary and unreasonable interference with and prohibition upon labor unions and their members and the plaintiff labor organizations herein and the members of plaintiff labor organizations in their constitutional right to conduct their own lawful internal and mutually agreeable affairs, and in their constitutional right to engage in the activities of labor organizations and the members thereof as herein-

before set forth for the objectives and purposes hereinabove described.

(D) By virtue of the foregoing the statute deprives labor unions and their members of liberty and property without due process of law, and abridges their privileges and immunities and denies them the equal protection of the law contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States; and, further, by virtue of the fact that said statute denies to labor unions and the members thereof privileges and immunities and equal protection of the laws allowed all other classes of citizens of the State of Alabama, said statute is applicable solely to craft, trade or industrial unions and all other voluntary associations and labor organizations subject to the Railway Labor Act are exempt, and arbitrarily applies to craft, trade or industrial labor unions limitations, restrictions, injury and interference not applied to any other voluntary associations or railway labor organizations. The provisions of said statute are an arbitrary selection of labor unions and mem- [fol. 12] bers, based on an arbitrary distinction without any foundation.

(E) The alleged statute by limiting the right to cease work to a majority of the employees of an employer as provided for in Section 13 of the statute, and by denying such rights and privileges to minorities of employees or to members of labor unions who may not constitute a majority of the employees, works an arbitrary, unreasonable, fictitious classification and one without any substantial basis in law.

(F) Section 16 is further unconstitutional because it is an attempt to regulate by law the internal affairs of a labor organization, to impose upon the members of such organization the requirements, duties and obligations of corporate structure, deny to them the right to retain their present rights, privileges and benefits of membership in an unincorporated association, deprives them of their personal and property rights as individuals and as a group, and constitutes an arbitrary interference with labor unions and their members in their constitutional right to conduct their own lawful internal affairs, and said sections applying only to labor unions are not a reasonable, natural or just classification, but constitute an artificial or arbitrary distinction having no basis in law.

(G) Said alleged statute constitutes an unreasonable, arbitrary and discriminatory regulation, licensing and restriction of the activities and affairs of labor organizations, their representatives and members, including plaintiff labor organizations herein, in the State of Alabama. Said regulations, licensing and prohibitions, have no rational basis in the protection of the public health, safety, morals or welfare, serve no public interests, and no circumstances, conditions or facts exist which do or reasonably could justify or support said regulations, licensing and prohibitions. On the contrary plaintiffs affirmatively allege that the Alabama Legislature did not find to exist nor do there in fact exist any factual conditions or circumstances in the State of Alabama serving to justify or support the regulations, licensing and prohibitions as prescribed in the statute.

(H) Plaintiffs further aver that the defendant, Robert E. McAdory, as Solicitor of Jefferson County, Alabama, and Holt McDowell, as Sheriff of Jefferson County, Alabama, each take the position that said Act # 298 is constitutional [fol. 13] and a valid enactment and valid law of the State of Alabama and that in consequence thereof each of them have certain duties to perform with reference to said Act and with reference to certain sections of said Act which duties arise by operation of law and are more specifically defined by said Act No. 298 and the Constitution and statutes of the State of Alabama and that the existence of said Act threatens the rights, liberty and pursuit of happiness of each of the plaintiffs and is in itself a threat to and jeopardy of their constitutional rights above set out.

(I) Plaintiffs aver that the plaintiff, B. E. Jones is almost daily confronted with the question of whether he will handle, install, use or work on materials that are not produced, processed or delivered by members of a labor organization. For many years he has been a foreman or superintendent and in that administrative, and supervisory capacity as that kind of an employee he must decide on such matters. The other plaintiffs are likewise daily confronted with whether they will allow or permit their members to handle, install, use or work on such materials, equipment or supplies not produced, processed or delivered by members of a labor organization. It is the intention of the

plaintiffs not to comply with said Section 12 of said Act No. 298 unless the Court adjudges it to be constitutional. There is no contract between B. E. Jones' employer and a labor organization in writing for the use solely of union made materials, equipment or supplies.

(J) Plaintiffs further aver that many times in the past strikes have been called for lawful purposes when such strikes were not authorized by the vote of the majority of the regular employees working in such business but only by the vote of the majority of the employees belonging to the particular local union that called the strike. It is the purpose and intention of Local No. 103 to continue to call a strike whenever a majority of the members of Local No. 103 vote to call a strike for a lawful purpose and it is the purpose of the other parties plaintiff to aid and assist Local No. 103 in conducting said strike so called unless the Court adjudges Section 13 of said Act No. 298 to be a constitutional enactment and the plaintiffs aver that situations now exist in the Birmingham district where Local Union No. 103 or some other local affiliated with the Alabama State Federation of Labor may deem it necessary to call a strike for a lawful purpose without having such strike authorized by the vote of the majority of regular [fol. 14] employees working in the business or plant affected by the strike.

(K) Plaintiffs aver that Local No. 103 and all other local unions affiliated with the Alabama State Federation of Labor and the American Federation of Labor permit employees other than those in executive, administrative, professional or supervisory capacities to be members and that each of said locals now have as members persons who are employees other than those in executive, administrative, professional or supervisory capacities and said locals also have as members executive, administrative, professional or supervisory employees and it is the purpose and intention of said executive, administrative, professional or supervisory employees, including the plaintiff, B. E. Jones, to retain their membership in their respective local labor organizations and of the other parties plaintiff in this cause to assist them in so doing unless the court adjudges said Section 16 of said Act No. 298 to be a constitutional enactment.

(L) Plaintiffs aver that each of the plaintiff organizations are mutually interested in and affected by any action, statute or condition which affects the American Federation of Labor, the Alabama State Federation of Labor, the United Brotherhood of Carpenters and Joiners of America, or Local No. 103, and that the interest of the individual plaintiff, B. E. Jones, is likewise affected by any action, statute or condition that affects any of the labor organizations which are parties plaintiff to this case. Plaintiffs further aver that each labor organization which is a party plaintiff to this case is likewise affected by any action, statute or condition which affects any member of any plaintiff organization, or any member of any labor organization affiliated with any of the plaintiff organizations. All of which is more fully shown by an affidavit of W. O. Hare, copy of which is hereto attached, marked "Exhibit B" and made a part of this pleading as if fully set out herein, and by an affidavit of Sam Roper, copy of which is hereto attached, marked "Exhibit C" and made a part of this pleading as if fully set out herein, and by an affidavit of William Green, a copy of which is hereto attached, marked "Exhibit D" and made a part of this pleading as if fully set out herein.

[fol. 15] 7. Plaintiffs aver that under Section 7 of said Act every labor organization functioning in Alabama is required to file the statement referred to in said Section 7 within sixty days after the effective date of this act. Because they are advised that the said act and the said section are unconstitutional, null and void, the Alabama State Federation of Labor and Local No. 103 each propose to and will disregard said section and refuse to comply with the same unless the court holds that it is constitutional; and the plaintiff, B. E. Jones, proposes to and will aid and abet them in disregarding said section unless the court decides that it is constitutional.

8. In Section 12 of said Act No. 298 it is made unlawful for any employee to refuse to handle, install, use or work on any particular materials, equipment or supplies because such materials, equipment or supplies were not produced, processed or delivered by members of a labor organization. On information and belief plaintiffs aver that said section is unconstitutional, null and void. They further aver that B. E. Jones is a member in good standing of Local No. 103

and has been a member in good standing of said local for approximately twenty-five years. B. E. Jones is employed by J. F. Holley, a contractor, as superintendent, and said B. E. Jones has been employed as a superintendent by other firms or organizations for approximately fifteen years. As superintendent said B. E. Jones is authorized to employ and discharge men working on the job under him. As superintendent said B. E. Jones has general superintendence of the jobs in progress and give direction as to how the work is to be performed and plans for the execution of said work. As Superintendent B. E. Jones is furnished with blue prints of the work to be done on the job and he examines said blue prints and makes plans for the execution of said work according to the blue prints furnished by the engineers and draftsmen. B. E. Jones selects, appoints and supervises the foremen on the various jobs, and B. E. Jones is invested with authority and exercises the authority to say whether a foreman or workman in any craft on the job is employed or whether he is discharged, and he has a right to make such decisions in his capacity as superintendent. B. E. Jones also has the authority to de- [fol. 16] termine whether materials, equipment or supplies purchased and delivered on the job will be used, handled or installed on the job. He has the authority to reject materials, equipment or supplies which were not produced, processed or delivered by members of a labor organization, and he claims the right to exercise that authority at any time he deems it for the best interest of the members of local 103 or the Brotherhood of Carpenters and Joiners of America. Plaintiffs aver that from time to time B. E. Jones and other superintendents similarly emloyed refused to handle, install, use or work on any materials, equipment or supplies that were not processed or delivered by members of labor organizations, and that they will continue to do so unless the court adjudges that the Bradford Act and Section 12 thereof are valid and constitutional. And plaintiffs aver that the other parties plaintiff have aided and abetted and will continue to aid and abet the said B. E. Jones and other superintendents similarly situated in doing so unless the court adjudges said Act and said Section 12 thereof constitutional. And plaintiffs aver that there is no contract between B. E. Jones' employer and a labor organization for the sole use of union made equipment and supplies. Plaintiffs aver that one advantage that accrues to members

of organized labor from the use of material, equipment and supplies produced and processed by members of a labor organization is that workmen dealing with and handling said materials and supplies know that they were produced by experienced workmen and conform to high quality of workmanship, whereas little, if any, information is available about material and equipment produced by non-union workmen.

9. In Section 13 of said Act No. 298 known as the Bradford Act it is provided in substance that no strike shall be had in any business, plant or any unit thereof except when such strike is authorized by the vote of the majority of the regular employees working in such business, plant or in such unit thereof, expressed by a secret written ballot. On information and belief plaintiffs aver that said Section No. 13 is unconstitutional, null and void and violates each of the provisions of the constitution of Alabama and the [fol. 17] constitution of the United States referred to in paragraph 6. Plaintiffs aver that Local No. 103 claims the right and will exercise the right to call a strike of its members wherever they are employed, to enforce proper and lawful demands for higher wages, shorter hours and more advantageous working conditions without such strike being authorized by a vote of the majority of the regular employees working in such business or plant expressed by a secret written ballot, and that it is now about to and will exercise said right unless Section 13 is adjudged a valid enactment. Plaintiffs aver that there are numerous plants and businesses in the Birmingham district in which members of Local 103 are regularly employed and that said members of Local No. 103 so employed do not constitute a majority of the regular employees working in such business or plant and that Local 103 has no contractual relation with or control over a majority of the employees working in such business or plant; it only has contractual relations and control over its members working in such business or plant. Said local No. 103 claims the right to call its members working in said business, businesses or plants out on a strike without obtaining authority for such strike by the vote of the majority of the regular employees working in such business or plant expressed by secret written ballot and without being influenced by such action in anyway, and it proposes to exercise that right unless Sec-

tion 13 is adjudged a valid enactment. Said Local 103 further avers that the regular employees working in such business or plant other than those who are members of said Local 103 are not connected with said Local 103 in any way. The other parties plaintiff are aiding and abetting and will continue until said Act No. 298 is adjudged constitutional, to aid and abet and assist Local 103 in exercising its right to call its members out on a strike to enforce legitimate demands for higher wages, shorter hours and more advantageous working conditions wherever they may be employed without regard to whether a strike is authorized by the vote of the majority of the regular employees working in the business or plant where members of Local 103 are employed expressed by secret written ballot.

10. In Section 15 of said Act it is made unlawful for any labor organization to collect, receive or demand, directly or indirectly, from any person, any fee, assess-[fol. 18] ment or sum of money whatsoever as a work permit or as a condition for the privilege of working. Plaintiffs aver that said section of said Act is unconstitutional. Plaintiffs aver that Local No. 103 proposes to and will disregard and violate said section by collecting money for work permits, unless the court declares it to be unconstitutional. Plaintiffs aver that Local No. 103, or the international organization with which it is affiliated, had written contracts with employers in Jefferson County, Alabama, in force and effect prior to the passage of said Act No. 298, which contracts are now in force and effect, in which it was provided in substance that all carpenters employed by said employers in Jefferson County, Alabama, should be requisitioned from and be members of Local No. 103, or in the event Local No. 103 was not able to supply the carpenters requisitioned, then the employer was at liberty to employ carpenters who were not members of organized labor; but in the event that became necessary, said persons so employed would obtain a work permit from said Local 103 and pay an agreed sum therefor, which would give them the privilege of working under said contract for a period of thirty days until they could be investigated. In said contract it was further provided that any person employed by the employer who was not a member of Local No. 103 or the international with which it was affiliated, would be required to join said Local No. 103 at the expiration of

said work permit and said thirty-day period, or be discharged. Plaintiffs further aver that in the operation and regulation of the United Brotherhood of Carpenters and Joiners of America, and in the rules and regulations governing the organization, it is provided in substance that if a member of the organization who is a member of a local union in some city other than the City of Birmingham, Alabama, comes to the City of Birmingham, Alabama, seeking employment, he may obtain employment in the City of Birmingham, Alabama and within the jurisdiction of Local No. 103 by presenting his certificate of membership in the local union in the city from which he came and paying said Local No. 103 an agreed sum for a work permit, which authorizes such person to work in the jurisdiction of Local No. 103 for a period of, to-wit, thirty days until he can be investigaged and Local No. 103 can determine whether it wants to receive him as a member. If at the [fol. 19] expiration of said time said local determines it will receive said person as a member he must then transfer his membership in the United Brotherhood of Carpenters and Joiners of America to Local 103 in Birmingham, Alabama, or abandon his employment in the City of Birmingham, Alabama. If local No. 103 refuses to admit such person as a member, he will be so notified and must abandon his employment in Birmingham, Alabama. And plaintiffs aver that only in this way can the United Brotherhood of Carpenters and Joiners of America and said Local No. 103 regulate and properly operate their business and regulate the relations between persons whose membership is in local union without the City of Birmingham and persons whose membership is in Local No. 103, and only in this way can the United Brotherhood of Carpenters and Joiners of America regulate and stabilize the employment of its members throughout the United States. And plaintiffs aver that the other parties plaintiff have been aiding and abetting and will continue, until said Act No. 298 is adjudged constitutional, to aid and abet and assist Local No. 103 in demanding, receiving and collecting sums of money for said work permits.

11. In Section 16 of said Act No. 298 it is made unlawful for any executive, administrative, professional or supervisory employee to be a member in or to be accepted for membership by any labor organization whose constitution

and by-laws permit other employees to be members thereof. Because they are advised that said act and said section thereof are unconstitutional, the plaintiff B. E. Jones will disregard said act and retain his membership in Local No. 103 unless the Court holds that said section is constitutional; and the Alabama State Federation of Labor and Local No. 103 will each aid and abet him in that conduct.

12. In Section 17 of said Act No. 298 it is made unlawful for any labor organization to make any financial contribution to any political party or to any candidate for any political or party office or to the committee of any political party or the committee of any candidate for any office, as a part of the campaign expenses of such party, person or committee, or to expend any funds in furtherance of the candidacy of any candidate for any public office. Plaintiffs aver that said Section 17 is unconstitutional, null and void [fol. 20] and of no effect. Plaintiffs aver that the Alabama State Federation of Labor has voluntarily made in times past, and is about to make and will voluntarily make, a financial contribution to the Democratic Party and to the candidates of its choice, unless the court adjudges said Section 17 of said Act No. 298 to be constitutional. Plaintiffs aver that the other parties plaintiff will aid, abet and assist the Alabama State Federation of Labor in so doing. The Alabama State Federation of Labor claims the right to make a financial contribution to any political party or to any person who may be a candidate for any political or party office that it desires to support, and it proposes to do so unless said Section 17 is held to be constitutional and valid.

13. Plaintiffs aver that a justiciable issue has arisen between the plaintiffs and the defendants in this, that the defendants claim that each of the aforesaid sections is constitutional and that said Act No. 298, known as the Bradford Bill, is constitutional. In said act it is made the duty of the defendant Robert E. McAdory, as Solicitor of Jefferson County, Alabama, to institute and prosecute an action against every labor organization that violates any provision of said act to recover a penalty of $1,000 for each and every violation thereof by a labor union. Plaintiffs aver that there are scores of labor unions in Jefferson County affiliated with the Alabama State Federation of Labor other than labor organizations subject to the railway labor act,

and that each of said local unions so affiliated propose to follow the identical course it is averred that plaintiffs in this case will follow by disregarding the several provisions of said act No. 298 unless said act and the several sections thereof are held to be constitutional, all of which will necessitate the filing of a large number of suits by Robert E. McAdory as Solicitor of Jefferson County, Alabama, against said organization, which would take up a large amount of his time that is paid for by the taxpayers of the State of Alabama and of Jefferson County, Alabama.

14. Under Section 18 of said alleged Act No. 298, the doing of any act forbidden or declared to be unlawful by the provisions thereof, except where a penalty is specifically provided therein, or the commission of any offense therein declared to be a misdemeanor, is made a misdemeanor and punishable by a fine not exceeding $500, or by imprison-
[fol. 21] ment at hard labor for not exceeding twelve months, or both. The defendant, Robert E. McAdory, as Solicitor of Jefferson County, Alabama, and the defendant Holt McDowell, as Sheriff of Jefferson County, Alabama, claim that said Act No. 298 and the several provisions thereof are constitutional and that it is their duty to enforce all of the provisions thereof, including the criminal provision referred to, and they are preparing to and will, unless the said act is declared unconstitutional, enforce said act and each and every provision therein. The enforcement of said act by the said sheriff and the said solicitor will call for the expenditure of large sums of the taxpayers' money and the expenditure of a large amount of the time of the sheriff and the solicitor, which is paid for by the taxpayers of the State of Alabama and Jefferson County, Alabama. It will necessitate expending funds of the taxpayers in obtaining evidence, paying witnesses for their attendance upon court, and for the necessary expense incurred in holding court and disposing of cases that will be brought by the sheriff and the solicitor in their effort to enforce the several provisions of said act.

15. Plaintiffs aver that it is in the public interest that the constitutionality of said act and the several provisions thereof be settled at the earliest practicable moment and at the least expense to all concerned. The validity of said act is of much concern to many thousands of members of

labor organizations in Jefferson County who are engaged in war work. Said act is the subject of numerous and almost continuous discussions in labor circles, including the workmen engaged in aiding the war effort of the United States of America, and said discussions occupy a large part of their time and thinking, and make it exceedingly difficult to keep up with the program of the Government for the production of material in this district.

16. Plaintiffs aver that said Local No. 103 was chartered by the United Brotherhood of Carpenters and Joiners of America, a nation-wide labor organization consisting of an unlimited number of local unions doing business in all of the several states of the United States; that said United Brotherhood of Carpenters and Joiners of America was established August 12, 1881 and operates under a constitution adopted by that organization, which constitution as [fol. 22] last amended April 1, 1941, was in effect at the time said act No. 298 was allegedly introduced, enacted and approved, and which constitution is now in force and effect; and complainants aver that each and every member of each local union of the United Brotherhood of Carpenters and Joiners of America is required, as a condition precedent to the maintenance of membership in said organization, to subscribe to and support said constitution.

17. Plaintiffs further aver that in paragraph (c) of Section 46 of the constitution of the United Brotherhood of Carpenters and Joiners of America it is provided as follows:

> "A member who desires to work in another jurisdiction from which he would return home daily, or who does not desire to transfer his membership, shall, before going to work, secure a Working Permit in writing from the Local Union or District Council in whose jurisdiction he may go to work. He shall pay for such Working Permit a charge of not less than Seventy-five Cents (75¢) per month, and if less than two years a member he shall pay any difference in initiation fee, and shall be subject to all local assessment levied exclusively for direct trade purposes by and for the use of the Local Union or District Council."

and plaintiffs aver that the members of each local union of the United Brotherhood of Carpenters and Joiners of

America voluntarily voted to have said provision incorporated in the constitution of the order and that they desire to have it enforced and respected, and they believe that the same is necessary to a proper and efficient operation of the United Brotherhood of Carpenters and Joiners of America and each of its local unions.

18. Plaintiffs aver that each member of the United Brotherhood of Carpenters and Joiners of America, including the plaintiff, B. E. Jones, acquired certain rights and privileges by virtue of membership in said organization, which he enjoyed at the time the alleged Act No. 298 was allegedly enacted by the Legislature of Alabama and allegedly approved by the Governor of Alabama; that said rights and benefits are enumerated in the constitution of the United Brotherhood of Carpenters and Joiners of America, and more particularly in Sections 48, 49, 50, 51 and 54, a true copy of which is hereto attached, mar-ed "Exhibit A" and made a part of this petition as if fully set out herein.

[fol. 23] 19. Plaintiffs further aver that all of the aforesaid rights and privileges to which the members of the United Brotherhood of Carpenters and Joiners of America are entitled under its aforesaid constitution, including the rights and privileges enjoyed by the plaintiff B. E. Jones, are conditioned upon membership in good standing in said organization, and that if any person belonging to or affiliated with the organization ceases to be a member in any of its local unions all the aforesaid rights and privileges are immediately terminated; and that if the plaintiff B. E. Jones' membership in the organization is terminated for any reason all the rights, benefits and privileges to which he is entitled under the constitution of the organization will immediately terminate.

20. Plaintiffs further aver that under the constitution, by-laws, rules and regulations established by the United Brotherhood of Carpenters and Joiners of America, governing the operation of its affairs and the affairs of its various local unions, all administrative, executive, and supervisory employees who give orders or instructions to members of any local union of the United Brotherhood of Carpenters and Joiners of America, relating to their work, must be members in good standing of a local union of

the United Brotherhood of Carpenters and Joiners of America, and that the members of the United Brotherhood of Carpenters and Joiners of America are, by said constitution, by-laws, rules and regulations, prohibited from receiving orders or instructions relating to their work from any administrative, executive or supervisory employee who is not a member in good standing of a local union of said United Brotherhood of Carpenters and Joiners of America; and plaintiffs aver that they and the members of the United Brotherhood of Carpenters and Joiners of America desire said provision to remain in full force and effect, and believe that the same is necessary for the maintenance and successful operation of said organization and the local unions affiliated with it.

21. The rule or standard contained in Section 12 of said Act No. 298 is so vague and indefinite as that it violates the due process of law clause of the Fifth Amendment to the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States and Sections 6, 7 and 13 separately and severally of the Constitution of Alabama, and deprives an employee who is a member of a union of equal protection of the laws in viola-
[fol. 24] tion of the Constitution of the state of Alabama.

The rule or standard contained in Section 15 of said Act No. 298 with reference to a work permit is so vague and indefinite as that it violates the due process of law clause of the Fifth Amendment to the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States, and Sections 6, 7 and 13 separately and severally of *of* the Constitution of Alabama, and deprives an employee who is a member of a union of equal protection of the laws in violation of the Constitution of Alabama.

The rule or standard contained in Section 16 of said Act No. 298 purporting to make it unlawful for any executive, administrative, professional or supervisory employee to be a member of or to be accepted for membership by any labor organization, is so vague, uncertain and indefinite as that it violates the provisions of the Constitutions referred to in par. VIII, supra.

22. In section 14 of said Act No. 298 known as the Bradford Act, it is made unlawful for any person to take part-

in or for two or more persons to agree among themselves or enter into a conspiracy to cause what is known as *as* an outlaw or wildcat strike as defined by said Act or to urge, advise and participate in any unlawful walkout or any unlawful obstruction of work or ways or means or process of work thereby causing stoppage of work in any plant or in any unit thereof affected thereby. Plaintiffs aver that the aforesaid provision violates each of the sections of the Constitution of the United States and each of the provisions therein heretofore set out and referred to in the petition as amended and that the plaintiff labor organizations have large numbers of members who claim the right to agree among themselves to strike for higher wages, shorter hours and more advantageous working conditions without such strike being authorized by a majority of the regular employees working in the business or plant where such members are employed and expressed by secret written ballot as required by Section 13 of said Act and that said members propose to and will in and about the exercise of said right until said Section 14 is declared to be a constitutional enactment, and the plaintiffs in this case will aid and abet and assist them in so doing.

Prayer

The premises considered plaintiffs pray that R. E. McAdory, as Solicitor of Jefferson County, Alabama, and Holt McDowell as Sheriff of Jefferson County, Alabama, [fol. 25] and William N. McQueen, Acting Attorney General of the State of Alabama, each be made parties defendant to this petition by appropriate legal process; that they each be required to plead, answer or demur thereto within the time prescribed by law, and plaintiffs pray that upon a final hearing the Court will make and enter a declaratory judgment in which it will declare that Act No. 298, known as the Bradford Act, alleged to have been adopted by the State of Alabama at the 1943 session of its Legislature, and allegedly approved by the Governor of Alabama on to-wit, June 29, 1943, is unconstitutional, null and void and of no effect. If for any reason the court does not declare the entire Act unconstitutional, null and void, and of no effect, the plaintiffs pray for a declaratory judgment in which the court will declare that Sections 7, 12, 13, 14, 15, 16 and 17, separately and severally, are each unconstitutional, null

and void and of no effect. If for any reason the court does not grant the relief hereinabove prayed for the plaintiffs pray for a declaration to the effect that a member of a labor organization who is employed as a superintendent or foreman in a plant or business and who has committed to him executive, administrative, professional or supervisory power is not affected by Section 16 of said Act and that it is not unlawful for members of Local 103 and other similar labor organizations affiliated with the Alabama State Federation of Labor to agree among themselves to strike for higher wages, shorter hours and better working conditions without said strike being authorized by the vote of the majority of the regular employees working in the plant or business where members of said labor organization are employed as purported to be required by Section 13 of said Act, and that it is not unlawful for a body of such members when authorized or required so to do by a vote of Local 103 or any of the other locals affiliated with the Alabama State Federation of Labor, to quit work as a body for the purpose of coercing their employer to accede to some demand they have made upon him and which he has refused.

And plaintiffs submit themselves to the jurisdiction of the court and ask for such other, further, general, special and appropriate relief as they may be entitled to.

Horace C. Wilkinson, Fred G. Koenig, Sr., Attorneys for Plaintiffs.

[fol. 26] EXHIBIT A—TO SUBSTITUTED PETITION

Members Entitled to Donation

Section 48. On the death of a member in good standing, his wife, or legal heirs as named on his application, shall be entitled to the member's funeral donation as prescribed in the Constitution and Laws of the United Brotherhood. A member may change his beneficiary provided, the change is made to wife, or blood relative. Such change shall be made on blank form to be furnished Local Unions by the General Secretary. The member making a change of beneficiary shall sign the form of change in the presence of President and Recording Secretary of his Local Union, who shall sign as witnesses; provided however, if said member is not in the jurisdiction of his Local Union at time

change is made, then he can have same sworn to before a Notary Public, or any officer authorized to administer oaths.

If a member in good standing dies without leaving any legal heirs, the Local Union shall see him respectably interred. The officers or a committee of the Local Union shall attend his funeral and the United Brotherhood shall pay the funeral expenses, but in no case shall these expenses exceed the full amount of donation to which the member is entitled at time of death, nor shall the United Brotherhood be held liable for any further donations in the name of the deceased.

In the case of any member whose disability or death is caused by intemperance, or his own improper conduct, or by any accident or disease incurred previous to joining the United Brotherhood, or by exposing himself to risks to which men in the carpentry industry are not usually liable, neither he nor any person for him shall have any claim on the funds of the United Brotherhood.

No claim for donation arising out of any sickness or accident occurring while a member is in arrears shall be allowed.

Section 49. A beneficial member to be entitled to donations must be not less than seventeen and not over sixty years of age at the time of admission to membership, and, when he joined, must have been in sound health and not afflicted with any disease or subject to any complaint likely to endanger his health or cause permanent disability.

A beneficial member will be entitled to the donations as prescribed in the Constitution and Laws of the United Brotherhood; provided, he is over one year a contributing [fol. 27] or financial member in good standing, and when three months in arrears shall be debarred from all donations until three months after all arrearages are paid in full, including the current month.

Donations for journeymen between the ages of twenty-one and fifty years shall be:

One year's membership	$50.00
Two years' membership	100.00
Three years' membership	150.00
Four years' membership	200.00
Five years' membership or more	300.00

An apprentice or a candidate between the ages of fifty (50) and sixty (60) years of age when admitted to membership shall be entitled to the donations on condition that they have been a member the required length of time and that they were in good health at the time of their initiation, and in good standing at the time of death, provided, however, they are over two years contributing or financial members in good standing, and when owing a sum equal to three months' dues they shall be debarred from all donations until three months after all arrearages are paid in full, which payment must include the payment of dues for the month in which the payment is made. They shall not be entitled to wife or disability donations. Donations for Apprentices and members admitted between the ages of fifty and sixty years shall be:

Two years' membership	$125.00
Three years' membership	50.00
Five years' membership	75.00
Ten years' membership or more	125.00

Section 50. A beneficial member, between the ages of twenty-one and fifty years at the time of admission to membership, or a member who has been transferred from the classification of apprentice to journeyman, lawfully married, shall, on the death of his wife, be entitled to the wife's funeral donation as prescribed in the Constitution and Laws of the United Brotherhood, on condition that his wife was sound in health at the time of his admission to membership; provided however, when he owes a sum equal to three months' dues he shall be debarred from all donations until three months after all arrearages are paid in full, which payment must include the payment of dues for the month in which the payment is made.

[fol. 28] An applicant eligible to beneficial membership, if married, whose wife is in ill health, may be admitted, but in the event of her death he shall not be entitled to the wife funeral donation. Should the wife be sick at the time her husband joins the Local Union, then said wife shall, after she becomes well, be examined by a physician who shall furnish a certificate of health to the Local Union.

All rules and provisions as to health and conduct applying to a claim for a member's funeral donation shall apply

to a claim for a wife's funeral donation for one wife only.

The wife funeral donation shall be:

One year's membership	$25.00
Two years' membership	50.00
Three years' membership or more	75.00

Disability Donations

Section 51. A beneficial member, not less than twenty-one and not more than fifty years of age at the time of admission to membership, or a member who has been transferred from the classification of apprentice to journeyman, in good standing, who becomes permanently disabled for life by accidental injuries received not less than one year after becoming a member, and is thereby totally incapacitated from ever again following the trade for a livelihood, shall be entitled to a disability donation as prescribed in these laws provided, however, when he owes a sum equal to three months' dues, he shall be debarred from all donations until three months after all arrearages are paid in full which payment must include the payment of dues for the month in which the payment is made. Payment of disability donation shall relieve the United Brotherhood from any further obligation, and upon the payment of his claim the Financial Secretary shall strike his name from the books, and he shall not be eligible for readmission in any Local Union of the United Brotherhood only as an honorary member.

A permanent disability claim must be filed with the General Treasurer within two years from the date of the accident. Failure to do so shall invalidate the claim.

Permanent disability shall consist of total blindness; the loss of an arm or leg, or both; the total disability of a limb; the loss of four fingers of one hand; or being afflicted with [fol. 29] any physical disability resulting from accidental injuries.

Whenever such disability has occurred through actual negligence, or the use of alcoholic drinks on the part of the disabled member, he shall not be entitled to donations.

In all claims for disability donations the claimant shall be carefully and thoroughly examined by at least two competent and reputable physicians selected by the Local Union, and they shall send a certificate in writing to the Local

Union as to the nature and extent of the disability and their opinion whether the claimant is totally disabled for life within the meaning of the laws of the United Brotherhood, the expense of said examination to be paid by the Local Union, and the report of said physicians be sent to the General Treasurer.

When a beneficial member, not less than twenty-one and not more than fifty years of age at the time of admission to membership, or a member who has been transferred from the classification of apprentice to journeyman, in good standing, meets with accidental injuries which might totally and permanently disable him from ever again following any branch of the trade for a livelihood, any member shall report to the Local Union within thirty (30) days, and the Local Union shall appoint a committee to visit the member and secure from him a detailed statement in writing as to how, when and where the accident happened, the names of eyewitnesses, if any, and retain same on file pending possible future claim for disability donation. The amount of disability donations shall be computed from the date of Initiation to the date of accident.

The disability donation shall be:

One year's membership	$50.00
Two years' membership	100.00
Three years' membership	200.00
Four years' membership	300.00
Five years' membership or more	400.00

Home and Pension

Section 54. A member shall not be less than 65 years of age to be eligible to the Home or Pension.

A member shall hold continuous membership for not less than thirty years.

[fols. 30-43] A member to be admitted to the Home or to be entitled to the Pension must show that he is unable to provide for himself a livelihood.

The traveling expenses of a member whose application for admittance to the Home has been approved by the proper authorities shall be paid by the Local Union in which he holds membership.

Members not wishing to avail themselves of the privilege of entering the Home may apply for a pension not to exceed $15.00 per month.

EXHIBIT "B"

Affidavit of W. O. Hare—Omitted. Printed side page 209 infra

[fols. 44-48 EXHIBIT "C"

Affidavit of Sam Roper Omitted. Printed side page 222 infra

EXHIBIT "1A"

Constitution and Laws

of the

United Brotherhood of Carpenters and Joiners of America

AND RULES FOR SUBORDINATE BODIES UNDER ITS JURISDICTION

Established August 12, 1881

Constitution as amended by the Twenty-Fourth General Convention held at Lakeland, Fla., December 9 to 16, 1940, and approved by referendum vote.

In effect April 1, Nineteen Forty-One

CONSTITUTION

NAME OF ORGANIZATION

A Section 1. This organization shall be known as the United Brotherhood of Carpenters and Joiners of America, and shall consist of an unlimited number of Local Unions and members subject to its laws and usages and shall not be dissolved while there are three (3) dissenting Local Unions.

B The following abbreviations, when used in the United Brotherhood, shall have these meanings, viz:

U. B.—United Brotherhood.	2d G. V. P.—Second General Vice-President.
G. E. B.—General Executive Board.	G. S.—General Secretary.
B. of T.—Board of Trustees.	G. T.—General Treasurer.
S. C.—State Council.	L. U.—Local Union.
P. C.—Provincial Council.	R. S.—Recording Secretary.
D. C.—District Council.	F. S.—Financial Secretary.
G. P.—General President.	G. O.—General Office.
1st G. V. P.—First General Vice-President.	

OBJECTS

Section 2. The objects of the United Brotherhood are: To discourage piece work, to encourage an apprentice system and a higher standard of skill, to cultivate friendship, to assist each other to secure employment, to reduce the hours of daily labor, to secure adequate pay for our work, to establish a weekly pay day, to furnish aid in cases of death or permanent disability, and by legal and proper means to elevate the moral, intellectual and social conditions of all our members, and to improve the trade.

OUR PRINCIPLES

Section 3. Resolved, That we as a body thoroughly approve of the objects of the American Federation of Labor and pledge ourselves to give it our earnest and hearty support.

UNION-MADE GOODS

Resolved, That members of this organization should make it a rule, when purchasing goods, to call for those which bear the trade mark of organized labor, and when any individual, firm or corporation shall strike a blow at labor organizations, they are earnestly requested to give that individual, firm or corporation their careful consideration. No good union man can kiss the rod that whips him.

LABOR LEGISLATION

Resolved, That it is of the greatest importance that members should vote intelligently, hence the members of this Brotherhood shall strive to secure legislation in favor of those who produce the wealth of the country, and all discussions and resolutions in that direction shall be in order at any regular meeting, but party politics must be excluded.

IMMIGRATION

Resolved, That while we welcome to our shores all who come with the honest intention of becoming lawful citizens, we at the same time condemn the present system which allows the importation of destitute laborers, and we urge organized labor everywhere to endeavor to secure the enactment of more stringent immigration laws.

FAITHFUL WORK

Resolved, That we hold it as a sacred principle that Trade Union men, above all others, should set a good example as good and faithful workmen, performing their duties to their employers with honor to themselves and their organization.

SHORTER HOURS OF LABOR

We hold a reduction of hours for a day's work increases the intelligence and happiness of the laborer, and also increases the demand for labor and the price of a day's work. We advocate the adoption of the Five-Day, Thirty-Hour Work Week and urge all Local Unions to put this into effect as soon as possible.

MISCELLANEOUS

We recognize that the interests of all classes of labor are identical, regardless of occupation, nationality, reli-

gion, or color, for a wrong done to one is a wrong done to all.

We object to prison contract labor, because it puts the criminal in competition with honorable labor for the purpose of cutting down wages, and also because it helps to overstock the labor market.

Resolved, That we most earnestly condemn the practice in vogue in many cities, but more especially in the West, of advertising fictitious building booms, as it has a tendency to demoralize the trade in such localities.

Resolved, That we recommend to all District Councils under the jurisdiction of this United Brotherhood, and to all Local Unions in localities where more than one Local Union, but no District Council exists, to establish and maintain an employment office that will afford the employer the opportunity to apply to for help and our members to apply to when in search of work.

HEADQUARTERS, GENERAL OFFICE AND HOME

Section 4. The Headquarters and General Office of the United Brotherhood shall be located in Indianapolis, Ind., until removed by a Convention and sustained by a referendum vote of the Brotherhood.

PRINTING PLANT

A Section 5. The General Executive Board shall have power to install and operate a printing plant at Headquarters in Indianapolis, Ind.

HOME

B The Home for Aged Members shall be located at Lakeland, Florida.

JURISDICTION

A Section 6. The jurisdiction of the United Brotherhood of Carpenters and Joiners of America shall include all branches of the Carpenter and Joiner trade. In it shall be vested the power through the International Body to establish and charter Subordinate Local and Auxiliary Unions, District, State and Provincial Councils in all branches of the trade, and all other skilled employes working at the industry, and its mandates must be observed and obeyed at all times.

B The right is reserved to the United Brotherhood through the International Body to regulate and determine all mat-

ters pertaining to fellowship in its various branches and kindred trades.

C To subordinate Local or Auxiliary Unions, District, State and Provincial Councils the right is conceded to make all necessary laws for Locals and District, State and Provincial Councils which do not conflict with the laws of the International Body.

D In cases where local Central Bodies are formed Local or Auxiliary Unions, District, State and Provincial Councils shall have power to enforce the laws of such bodies, provided such laws do not conflict with the laws of the United Brotherhood of Carpenters and Joiners of America.

E The right is reserved to establish jurisdiction over any Local or Auxiliary Unions, District, State or Provincial Councils whose affairs are conducted in such a manner as to be a menace to the welfare of the International Body.

F The United Brotherhood shall enact and enforce laws for its government and that of Subordinate Locals and Auxiliary Unions and District, State and Provincial Councils and members thereof.

TRADE AUTONOMY

A Section 7. The trade autonomy of the United Brotherhood of Carpenters and Joiners of America consists of the milling, fashioning, joining, assembling, erecting, fastening or dismantling of all material of wood, hollow metal or fiber, or of products composed in part of wood, hollow metal or fiber, the laying of all cork and compo, all shingles, the erecting and dismantling of machinery and the manufacturing of all wood materials, where the skill, knowledge and training of a carpenter are required, either through the operation of machine or hand tools.

B Our claim of jurisdiction, therefore, extends over the following divisions and sub-divisions of the trade:

Carpenters and Joiners, Railroad Carpenters, Bench Hands, Stair Builders, Millwrights, Furniture Workers, Shipwrights and Boat Builders, Reed and Rattan Workers, Ship Carpenters, Joiners and Caulkers, Cabinet Makers, Box Makers, Bridge, Dock and Wharf Carpenters, Car Builders, Floor Layers, Underpinners and Timbermen, Pile Drivers, Shorers and House Movers, Loggers, Lumber and Sawmill Workers, and all those engaged in the running of woodworking machinery, or engaged as helpers to any of the above divisions or sub-divisions or the handling of material on any of the above divisions or sub-divisions.

When the term "carpenter and joiner" is used, it shall mean all the sub-divisions of the trade as herein specified.

DIVISION OF LAWS

A Section 8. The Constitution shall be compiled in three parts, viz.: Constitution, General By-Laws, General Laws.

B The laws of the United Brotherhood shall comprise, first: The Constitution, which shall contain the outline, fundamental principles, policies and objects of the Organization; the jurisdiction of the International Body, Local and Auxiliary Unions, District, State and Provincial Councils; the list of Officers and their general duties, and all matters pertaining to the raising of revenue.

C The General By-Laws, which shall contain the order of procedure in convention, the specific duties of officers, delegates and committees, the compensation of the General Officers and Organizers, and the standing rules and rules of order.

D The General Laws, which shall contain all matters pertaining to the relations of members, Local and Auxiliary Unions and District, State and Provincial Councils to each other, and all employes and others outside the jurisdiction of the United Brotherhood.

E Constitution and all Laws shall be amended only by referendum.

GENERAL OFFICERS AND ELECTIONS

A Section 9. General Officers of the United Brotherhood shall consist of a General President, First and Second General Vice-Presidents, a General Secretary, a General Treasurer, and an Executive Board of one member from each division of the United Brotherhood, who shall be exempt from all duties in their respective Local Unions.

B The names of all nominees for General Officers shall be referred to the members of the United Brotherhood for referendum vote, and the nominees receiving a plurality vote of the members voting shall be declared elected. Nominations for all General Officers shall be made on the fourth day of the first week of the Convention, and submitted to the members for referendum vote. The foregoing officers shall be elected by the Australian ballot system in the following manner: The names of all nominees shall be printed on official ballots, supplied by the United Brotherhood, the member making an X opposite the name of the nominee he wishes to vote for. The use of all other ballots shall be prohibited.

C Election returns to be counted by the Tabulation Committee must be received at the General Office not later than date designated by the General Executive Board when place and date of convention shall have been decided. The Tabulation Committee shall report in writing to the General President their findings of all votes cast by Locals for each candidate, and the candidate receiving a plurality of all legal votes cast shall be declared elected and shall hold office for a term of four years, commencing April 1st following election and continuing thereafter every four years, or until their successors are duly chosen and qualified. A full accounting of each Local Union's vote shall be published in pamphlet form and distributed to all Local Unions in the same manner as the monthly Financial Statement.

D Election of all officers shall be held at such time as may be designated by the General Executive Board following the Convention. All members must be notified by first-class mail of the time and place of such election. Ballots for the election shall be mailed to each Local Union at least twenty days preceding the week of the election.

E The President, Recording Secretary and Financial Secretary of the Local Union shall be present during the time set for such election. The President shall appoint two tellers, who shall be members of the Local Union. The President shall act as judge of the election and shall have charge of the official ballots provided by the United Brotherhood for such election and shall be responsible for the proper distribution of the same. The Recording Secretary shall act as clerk of election, and the Financial Secretary shall certify to the right of the members to vote. No member shall be allowed to vote unless he is a member in good standing in said Local Union.

F All ballots shall be marked by making an X opposite the names of the nominees to be voted for, and shall be immediately placed by the member voting in a box provided for such purpose by the Local Union, which shall be in charge of the President. After the time for balloting has elapsed, the ballots shall be counted by the tellers in the presence of the President. The Recording Secretary shall then prepare duplicate statements showing the number of votes cast for each candidate on election blanks furnished by the General Secretary. Such statements must be signed by the tellers, attested by the President and Re-

cording Secretary and have seal attached. One copy must be sent to the General Secretary by the Recording Secretary and President by registered mail, and one copy must be retained by the Local Union. All election returns must be sent to the General Secretary in sealed envelopes, said envelopes to be furnished by the General Secretary and marked "Election Returns, Care of General Secretary, United Brotherhood of Carpenters and Joiners of America, Carpenters' Building, Indianapolis, Ind." The General Secretary shall turn over all Election Returns to the Tabulation Committee, when they report for duty, in the same condition as received. All voted ballots to be counted must be sent by registered mail or parcel post to the General Secretary by the Recording Secretary following the election and all blank ballots shall be immediately destroyed by the Local Union.

G Failing to comply with this Section, the Local Union shall be fined Twenty-five Dollars ($25.00) by the General President, the fine to be paid to the General Office prior to any per capita tax, and the Local Union paying said fine shall collect the amount of the fine from the President and Recording Secretary of the Local Union fined.

H There shall be a Tabulation Committee of five members elected at each General Convention, who shall meet at the General Office following the election. They shall tabulate all votes as cast by each Local Union for each candidate, according to the intent of the voters, and no Local Union's vote shall be rejected for cause unless first proven that such vote was not properly filed or was fraudulently cast, and then not until the protested Local Union has had a reasonable notice to file answer with the Tabulation Committee. When the Tabulation Committee finally rejects a Local Union's vote as cast, notice of same must be given the Local Union involved. Appeal for a recount may be taken to the General Executive Board from the count or decision of the Tabulating Committee by any Local Union whose vote is rejected by the Tabulation Committee, and all such votes shall be counted for the candidates in accordance with the decision of the General Executive Board. All such appeals must be attested before a Notary Public by affidavits as to the truth of their written or printed statements.

I Any candidate shall have the right to be represented, without expense to the United Brotherhood, at the count of

the votes, and have the right to examine any statement, sheet or ballot upon request.

J Any member, Local Union, District Council, Provincial Council or State Council which sends out any letter, or letters or circulars of a scurrilous or defamatory nature against any candidate for office in the United Brotherhood, unless such candidate has been charged, tried and found guilty of a violation of some provision or provisions of the laws of the United Brotherhood, shall be expelled.

K No member shall be elected or appointed to any local or general office, organizer or deputy, or any delegate to any Central Body or to a Convention unless he is a citizen of the United States, Canada, Newfoundland, Mexico, Panama or Cuba, provided he has been a member of the United Brotherhood sufficient time to obtain citizenship, and must be a citizen of the country in which he holds office.

L A member to be eligible for nomination and election as a General Officer must be a full beneficial member.

GENERAL PRESIDENT

A Section 10. The General President shall issue and sign all charters, may grant dispensations in extraordinary cases and shall fill any vacancies among the General Officers by consent of a majority of the General Executive Board. The General President may appoint any member of the United Brotherhood in good standing as an organizer on request of any District Council on a two-thirds vote at a called meeting or on a two-thirds vote of a Local Union, where a District Council does not exist. The compensation for organizers shall be One Hundred Dollars ($100.00) per week.

B He may personally, or by deputy, take possession for examination, of all books, papers and financial accounts of any Local Union, District Council, State Council or Provincial Council, summarily when he may deem it necessary, and the same shall remain in his possession within the jurisdiction of the Local Union, District Council, State Council or Provincial Council until a complete report has been made and filed. During said examination a representative of the Local Union, District Council, State Council or Provincial Council may be present.

C He may issue charters to Ladies' Auxiliary Unions composed of the mothers, wives, daughters and sisters of the members of the United Brotherhood.

D He may issue charters to Auxiliary Unions composed of

persons working at an industry where organization would be a benefit to the United Brotherhood.

E He shall appoint a committee to compile the laws of the United Brotherhood, and all other committees unless otherwise provided. The compensation of all members of committees shall be regulated by the General Executive Board.

F He shall decide all points of law, appeals and grievances, except death and disability claims, and have power to suspend any Local Union, District Council, State Council or Provincial Council for violation of the Constitution or International Laws of the United Brotherhood subject to an appeal to the General Executive Board. Any Local or Auxiliary Union, District Council, State Council or Provincial Council which wilfully or directly violates the Constitution, Laws or principles of this United Brotherhood, or acts in antagonism to its welfare, can be suspended by the General President in conjunction with the General Vice-Presidents.

G Whenever in the judgment of the General President there be a superfluous number of Local Unions in any locality, and he should deem in his wisdom a consolidation for the best interests of the organization, locally or at large, he shall have power to order two or more of such Local Unions to consolidate and to enforce the consolidation, provided such course receives the sanction of the General Executive Board.

H He shall supervise the entire interests of the United Brotherhood, and perform such other duties as the Constitution and Laws of the United Brotherhood may require, and shall by virtue of his office be a delegate to the Conventions of the A. F. of L. and Building Trades Department. and shall submit a report quarterly to the General Executive Board, and the same shall be published in the official Journal. He shall submit, monthly, to the General Secretary an itemized account of all moneys expended by him on behalf of the United Brotherhood.

I In case of charges against any General Officer, the General President shall have power to suspend said officer pending an investigation by the other members of the General Executive Board, such investigation to take place, and the findings of the General Executive Board, with a copy of all evidence, submitted to a general vote of the Local Unions within thirty days. The result of said vote to be returned to the General President within thirty days thereafter, and should the accused be found guilty as

charged by a two-thirds vote of the members of the United Brotherhood voting, the General President shall make the suspension permanent.

J Where an Auxiliary, Local Union, or District Council, State Council or Provincial Council has asked the assistance of the General Office, the General President may, with the consent of the General Executive Board, make settlement with employers, and the said Auxiliary, Local Union, or District Council, State Council or Provincial Council must accept the same.

K Whenever, in the judgment of the General President, subordinate bodies or the members thereof are working against the best interests of the United Brotherhood, or are not in harmony with the Constitution and Laws of the United Brotherhood, the General President shall have power to order said body to disband under penalty of suspension. The General President shall have power to grant dispensation for the use of the label, stamp or die, where such will be beneficial to the Organization.

L The General President shall receive Two Hundred Dollars ($200.00) per week salary.

FIRST GENERAL VICE-PRESIDENT

A Section 11. The First General Vice-President, under the supervision of the General President, shall render such assistance to the General President as he may require, and by virtue of his office shall be a delegate to the Conventions of the Label Trades Department, A. F. of L., and in case of a vacancy in the office of the General President, he, as next in rank, shall become General President and perform the duties of that office.

B His duties shall be to devote all his time to the United Brotherhood, with Headquarters at the General Office. He shall have power to examine, approve or disapprove all Local Union, District Council, State Council or Provincial Council laws. He shall have charge of and issue the label and keep a record of same in accordance with the Constitution and Laws of the United Brotherhood. He shall keep a record of all union and non-union shops, mills and factories, also the number of men employed in all towns, cities and states in said mills, shops and factories, and their wages, hours and conditions, and keep a record of same for the General Office, Local Unions, District Councils, State Councils, Provincial Councils, organizers, deputies and Business Agents, and perform such other duties as may be assigned to him by the General President. He

shall submit a quarterly report to the General President for information of the General Executive Board, the same to be published in the Official Journal.

C In case of charges against the General President, the General Vice-President, in conjunction with the other members of the General Executive Board, shall have power to suspend said officer pending an investigation by the General Executive Board and the General Vice-Presidents. And the findings of the court so organized shall be submitted, with a copy of all evidence, by the General Secretary to a vote of all the members of the United Brotherhood within thirty days after the findings are complete, the result of said vote to be returned within thirty days thereafter, and should the accused be found guilty as charged by a two-thirds vote of all the members of the United Brotherhood voting, the aforesaid officers shall make the suspension permanent.

D The First General Vice-President shall receive One Hundred and Sixty Dollars ($160.00) per week salary.

SECOND GENERAL VICE-PRESIDENT

A Section 12. The Second General Vice-President shall render such assistance to the General President as he may require, and in case of a vacancy in the office of the First General Vice-President, he shall assume that office and perform the duties of same.

B He shall assist the General President in the discharge of his duties, and in the absence of the General President and the First General Vice-President from the General Office shall perform the duties of the General President. He shall, when not engaged at the General Office, devote his time to the interest of the United Brotherhood under the direction of the General President. He shall submit a quarterly report to the General President, the same to be published in "The Carpenter."

C He shall receive One Hundred and Fifty Dollars ($150.00) per week salary.

GENERAL SECRETARY

A Section 13. The General Secretary shall preserve all important documents, papers and letters and retain copies of all important letters sent on business of the United Brotherhood. He shall conduct all official correspondence pertaining to his office and sign all charters, if in proper order. He shall have charge of the seal of the United Brotherhood, and shall affix it to all important official doc-

uments; keep a record of all members of the United Brotherhood—beneficial and semi-beneficial, also those owing three months' dues, dropped, deceased, resigned, expelled and the cause of expulsion.

B He shall publish the Official Journal on the 15th of each month, giving therein all business pertaining to the Local Unions, and mail a copy of same to the home address of each member who is entitled to donations. He shall also issue the General Password quarterly, and a General Password to the Ladies' Auxiliary semi-annually, and publish a monthly Financial Statement in pamphlet form of all moneys received and expended and the sources from which they have been received, same to be forwarded to the Secretary of each Local Union.

C He shall print the Constitution and Laws of the United Brotherhood in English. And the interpretation of the Constitution and Laws in the English language shall be the only one by which the United Brotherhood will be governed.

D He shall receive all moneys due from Local Unions and other sources, giving his receipt therefor. He shall keep a correct financial account between the several Local Unions and the United Brotherhood, and draw an order on the General Treasurer for all bills legally due by the United Brotherhood, and also those authorized by the General Executive Board, and he shall notify the Local Unions by registered letter, when two months in arrears, before the fifteenth day of the third month.

E He shall compile statistics as to the hours of labor, rate of wages, meeting nights, place of meetings, Saturday half holiday of all Local Unions and District Councils, publish same in each October issue of "The Carpenter"; also an annual report of his work, and shall perform such other duties as are required of him by the Constitution and Laws of the United Brotherhood.

F He shall daily turn over to the General Treasurer all moneys received by him, taking his receipt therefor.

G He shall file a bond with the General Executive Board in the sum of Twenty Thousand Dollars ($20,000.00) for the faithful and honest performance of his duties. He shall employ his own clerical assistance at reasonable salaries payable from the General Fund. He shall by virtue of his office be a Delegate to the Conventions of the A. F. of L. and Building Trades Department.

H He shall receive One Hundred and Sixty Dollars ($160.00) per week salary.

GENERAL TREASURER

A Section 14. The General Treasurer shall receive from the General Secretary all funds and deposit same in the name of the United Brotherhood of Carpenters and Joiners of America in such banks as may be designated by the General Executive Board. He shall make no disbursements, except on order of the General Secretary and signed by the General President, and in case of drawing money from the banks, all checks must be signed by the General Treasurer and countersigned by the General President or General Secretary. He shall submit an itemized statement of all moneys received and expended by him to the General Executive Board at their quarterly meeting for the preceding three months, and submit to them his books and vouchers for inspection and audit, and shall at any time deliver to the General Executive Board all his books and vouchers when called on to do so. He shall examine and pay all legal claims, in accordance with the laws of the United Brotherhood; order Local Unions to furnish such evidence and information as he may require to render decisions in death and disability claims. He may retain such evidence and papers for his files as the case may warrant, but upon the request of the Local Union must furnish said organization with a copy of the same, and shall perform such other duties as the General Executive Board may require, and file a bond with the General Executive Board in the sum of Fifty Thousand Dollars ($50,000.00) as security for the faithful performance of his duties.

B He shall receive One Hundred and Sixty Dollars ($160.00) per week salary.

GENERAL EXECUTIVE BOARD

A Section 15. There shall be seven divisions of the jurisdiction of the United Brotherhood, and one member of the General Executive Board shall be elected from each division as follows:

B Division No. 1 shall be composed of the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut and New York. Division No. 2 shall consist of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia and District of Columbia. Division No. 3 shall consist of Kentucky, Indiana, Illinois, Ohio, Michigan.

and Wisconsin. Division No. 4 shall consist of North and South Carolina, Georgia, Florida, Alabama, Tennessee, Mississippi, Arkansas, Louisiana, Porto Rico, Cuba, Republic of Panama, Canal Zone and Virgin Islands. Division No. 5 shall consist of Minnesota, North and South Dakota, Nebraska, Iowa, Kansas, Missouri, Texas and Oklahoma. Division No. 6 shall consist of Washington, Montana, Oregon, Idaho, Wyoming, California, Nevada, Utah, Colorado, Arizona, New Mexico, Alaska, British Columbia, Mexico and Hawaiian Islands. Division No. 7 shall consist of Newfoundland, the Dominion of Canada, except the Province of British Columbia.

C The General Executive Board shall be composed of the General President, First General Vice-President, General Secretary, General Treasurer, and one member from each of the above divisions of the United Brotherhood, who between Board meetings shall devote their entire time to the interest of the United Brotherhood, under the supervision of the General President. The General President shall be chairman of the General Executive Board and the General Secretary the secretary; they shall hold quarterly meetings, or when required, and at the call of the chairman of the General Executive Board, special meetings. All correspondence and appeals for the General Executive Board shall be sent to the General Secretary, who shall present same at the next regular meeting of the Board. No General Officers shall vote on decisions rendered by themselves. The proceedings of the General Executive Board shall be published in "The Carpenter."

D The General Executive Board shall decide points of law, all grievances and appeals submitted to them in legal form, and their decisions shall be binding until reversed by the Convention.

E The General Executive Board shall have power to authorize strikes in conformity with the Constitution and Laws of the United Brotherhood, and when necessary to defend the organization in any locality against the attacks of employers, combinations or lockouts, or any attempt to disrupt or destroy the organization, to support such locality by levying a per capita assessment and by ordering a cessation of work for any employer involved, irrespective of where such work is located; enter into agreement with other organizations with reference to jurisdiction over work; or a general offensive or defensive alliance.

F Protect the property and interest of the United Brotherhood in such a manner as they may deem helpful and beneficial, so long as it is not inconsistent, and is within the meaning of this Section.

G Order strikes in any locality, regardless of agreements that may have been entered into by any Subordinate Unions, District, State or Provincial Councils, unless such agreements have been approved by the General President.

H To make agreements with employers covering our jurisdiction; provided such agreements require employers to conform with the trade rules of the district where the work is located.

I It shall be the duty of the General Executive Board to prepare the bonds of the General Secretary and General Treasurer, and hold them in trust for the United Brotherhood. They shall employ a licensed State Accountant to make a quarterly audit of the accounts and the books of the General Secretary and General Treasurer, and said Accountant shall be required to submit a written itemized report to the chairman of the General Executive Board. They shall examine all bills and shall perform such other duties as provided for in the Constitution and Laws of the United Brotherhood.

J Whenever, by virtue of an increased death rate, a deficiency is likely to arise in the General Fund, the General Executive Board shall have the authority to draw from the funds of each Local Union such sum for each member in good standing as may provide against such deficiency.

K The General Executive Board, through the General Office, shall bond all financial officers of subordinate bodies of the United Brotherhood. The cost of said bonds to be paid for by the Local Union, District Council, State Council or Provincial Council. The price of Local bonds shall be a standing appropriation to be paid the General Secretary upon the receipt of notice from the General Office.

L The General Executive Board shall define a detailed trade autonomy declaration, and as defined, it shall be contained in the Constitution and Laws.

M The members of the General Executive Board from each division shall each receive a salary of One Hundred and Twenty-Five Dollars ($125.00) per week.

BOARD OF TRUSTEES

A Section 16. The General President, General Secretary, General Treasurer, and the seven (7) division members of the General Executive Board of the United Brotherhood of Carpenters and Joiners of America shall by virtue of their office constitute a Board of Trustees for the management and control of the Headquarters and real estate of the United Brotherhood of Carpenters and Joiners of America in the city of Indianapolis, Ind., the Home and real estate at Lakeland, Florida or property elsewhere.

B It shall be the duty of said Board of Trustees to organize and elect a Chairman and Secretary from among their members, and they shall keep a record of their meetings in a book to be kept for that purpose.

C The said Board of Trustees shall make a quadrennial report to the General Convention of all business transacted in connection with the Headquarters, Home and real estate of the United Brotherhood of Carpenters and Joiners of America.

D The said Board of Trustees shall authorize the General President and General Secretary to order the General Treasurer to pay all legitimate expenses in connection with said Headquarters, Home and real estate, subject to examination and approval of the Board when in session.

E Should a vacancy occur in said Board of Trustees either by death, resignation, removal or otherwise, then such vacancy shall be filled as provided in the Laws of the United Brotherhood. The person or persons thus chosen to fill such vacancy shall succeed to all rights of the member he is chosen to succeed.

F The title of the Headquarters, Home and real estate now held by this United Brotherhood, or which may be hereafter acquired, shall be vested by proper conveyance in said Board of Trustees and their successors in office, to be held by said Board of Trustees in trust for the sole use, benefit and behoof of this United Brotherhood of Carpenters and Joiners of America.

G Said Board of Trustees shall have the management and control of all property; may rent, lease and improve the same in such manner as the majority of said Trustees shall direct, but shall have no right to sell, convey or encumber any such property without submitting the proposition to sell, convey or encumber to a referendum vote; said ref-

erendum vote must be taken in accordance with the Laws of the United Brotherhood of Carpenters and Joiners of America, and said proposition must be accepted by two-thirds of the members voting in order to permit the said Trustees to sell, convey or encumber said Headquarters, Home or real estate, or any part thereof.

H All legitimate expenditures in connection with said Headquarters, Home and real estate shall be paid by the General Treasurer out of the funds of the United Brotherhood of Carpenters and Joiners of America upon receipt of written order signed by the General President and General Secretary.

I All income received from rents, lease or sale of said property, or any part thereof, shall be received by the General Secretary as provided for in the Constitution and Laws of the United Brotherhood of Carpenters and Joiners of America, and shall become a part of the General Fund of the United Brotherhood of Carpenters and Joiners of America. An accounting of all such receipts and expenses shall be published in the regular monthly Financial Statement submitted by the General Secretary to the Local Unions. The receipts from the Home Property at Lakeland, Florida shall be turned over to the Home and Pension Fund.

J No member of the Board of Trustees, as herein constituted, shall receive any compensation for his services in connection with the management of these Headquarters, Home and real estate, other than such compensation as is already provided for in the Constitution and Laws of the United Brotherhood.

REVENUE

Section 17. The revenue of the United Brotherhood shall be derived from a per capita tax from all Local Unions on all members in good standing, also $5.00 on each new Beneficial and Semi-Beneficial member admitted excepting Apprentices and Honorary members, the cost of bonds on all subordinate officers, charter fees, rent of office building, interest on bank deposits, subscribers to and advertisements in the official Journal, clearance cards, fines, the sale of supplies and miscellaneous receipts.

GENERAL BY-LAWS

GENERAL CONVENTION

A Section 18. The United Brotherhood shall meet in General Convention quadrennially in September at Indianapolis, Indiana, or at Lakeland, Florida, on a date set by the General Executive Board, and the Board shall provide a suitable place for holding such Convention. The General President, General Secretary and General Treasurer shall act as the Committee on Credentials one day in advance of the Convention.

B On motion of fifteen (15) Local Unions, no two (2) Unions to be in one State or Province, a Special Convention may be called. Time, place and cause for holding the Convention must be stated in the motion and be approved by a general vote of the United Brotherhood.

C A Local Union shall be entitled to representation in the Convention for members in good standing on this basis: One hundred (100) members or less shall be entitled to one delegate; more than one hundred (100) members and less than five hundred (500), two delegates; more than five hundred (500) members and less than one thousand (1,000), three delegates; one thousand (1,000) or any greater number of members, four delegates.

D A Local Union shall not be entitled to representation which owes two months tax to the General Office.

E The election of delegates and alternates shall be held during the months of June or July preceding the Convention. All members shall be notified by mail to attend the meeting at which the delegates are to be elected. No member shall be eligible as a delegate unless he is a journeyman carpenter, working at or depending on the trade for a livelihood, or employed by the organization, and twelve months a member in good standing in the United Brotherhood prior to his election, except where the Local Union has not been in existence the time herein required.

F The Recording Secretary shall, under penalty of Five Dollars ($5.00) fine, at once report to the General Secretary the name and post office address of the delegate and alternate.

G Each delegate shall establish his claim to a seat by credentials and due book, duly signed by the President and Recording Secretary of the Local Union he represents, with seal of said Union attached.

H Each delegate shall be entitled to one vote; no proxy representation shall be allowed. A delegate to the Convention of the United Brotherhood must hold credentials from the Local Union of which he is a member, but several Local Unions can club together, or so can Local Unions in a District Council, and elect a delegate, but he must hold credentials from the Union of which he is a member.

I The mileage and expenses for the attendance of said delegates shall be defrayed by the Unions they respectively represent.

J A quorum for the transaction of business shall consist of a majority of the delegates attending the Convention. Any delegate who refuses to recognize and obey the sound of the gavel in the hands of the presiding officer shall (at the discretion of said presiding officer) be either fined the sum of Five Dollars ($5.00) or be disbarred from further voice or vote during the session, and the action taken by the presiding officer be reported by the General Secretary to the Local Union which elected the offending delegate as their representative.

K The Committee on Constitution shall meet fifteen days, and on Grievances and Appeals five days in advance of the Convention in the city where the Convention is to be held, and no organizers in the employ of the United Brotherhood, or members of the General Executive Board, shall be eligible to act on either of these committees.

L The Committee on Finance shall examine the accounts of the General Secretary and General Treasurer, and shall verify the audits made by the General Executive Board, and shall meet ten days in advance of the General Convention.

M All salaries of General Officers and General Organizers shall be fixed by the General Convention, subject to the referendum vote of the membership of the United Brotherhood.

N The committee to tabulate the votes of General Officers, and all delegates shall be nominated and elected as follows: On the fourth day of the first week of the Convention following the nomination of General Officers, the nomination for the Tabulating Committee and all Delegates shall be made. The names of all nominees as nominated shall be placed on official ballots supplied by the United Brotherhood, printed under the proper headings, and no other form of ballots shall be considered legal. Election shall be held on the fifth day of the first week of the

Convention in regular session, and shall be voted by the delegate marking an (X) cross opposite the name of the nominee to be voted for. The President, unless otherwise ordered, shall appoint five tellers to count the votes, and the nominees, except General Officers, receiving a plurality of all legal votes cast shall be declared elected.

ORDER OF PROCEDURE

Section 19. The order of procedure in Convention in the transaction of business shall be the same as at the preceding Convention until such time as the Committee on Rules reports.

DUTIES OF OFFICERS AT CONVENTION

Section 20. The General Officers shall be required to attend the Convention and they shall have a voice in same, and their expenses shall be paid out of the funds of the United Brotherhood.

GENERAL PRESIDENT

A Section 21. It shall be the duty of the General President to preside at all General Conventions of the United Brotherhood and conduct same according to parliamentary rules and in conformity with the laws of the United Brotherhood. Immediately after the opening of the Convention he shall appoint a Committee on Rules. After the report of the committee has been acted upon, the General President shall appoint such committees as may be necessary unless otherwise ordered. Each committee shall consist of five delegates.

B He shall submit to the Convention a quadrennial report.

GENERAL SECRETARY

Section 22. The General Secretary shall keep a correct record of the proceedings of the Convention. He shall submit a quadrennial report to the Convention.

GENERAL TREASURER

Section 23. The General Treasurer shall submit a quadrennial report to the Convention, showing the total receipts and expenses for the preceding four years.

GENERAL EXECUTIVE BOARD

A Section 24. The General Executive Board shall report quadrennially to the Convention.

BOARD OF TRUSTEES

B The Board of Trustees shall report quadrennially to the Convention.

GENERAL LAWS

JURISDICTION OF LOCAL UNIONS

A Section 25. Local Unions where no District Council exists shall have the power to make By-Laws and Trade Rules for their government and the members of the United Brotherhood working in their jurisdiction, which shall in no way conflict with the Constitution and International Laws of the United Brotherhood, State Council or Provincial Council, and must be approved by the First General Vice-President before becoming law, and shall be filed with the First General Vice-President and General Secretary; likewise all future amendments must be submitted and filed.

B Local Unions shall have power to regulate and make payment of sick donations only by an established By-Law of the Local Union.

C A Local Union cannot withdraw from the United Brotherhood or dissolve so long as ten members in good standing object thereto, but shall consolidate with another Local Union on order of the General President with sanction of the General Executive Board or by a majority vote of each Union at a special called meeting after paying up all indebtedness to date of consolidation.

D In communities where there are not a sufficient number of journeymen carpenters or persons eligible to membership in the United Brotherhood to form a Local Union, the General Organizer, or some person designated by the General President, shall have the power to initiate members in such localities, provide such members with Due Books, Constitutions, etc. Members so initiated shall be under the jurisdiction and shall pay dues to the nearest Local Union to the locality in which they reside, until such time as there are sufficient eligible persons in their locality to form a Local Union.

E Each Local Union is responsible for the carelessness or negligence of its officers.

F All Local Unions are prohibited from sending out circulars or appeals asking for financial aid in any form, except by and with the approval of the General Executive Board, attested by the General Secretary.

JURISDICTION OF DISTRICT COUNCILS

A Section 26. Where there are two or more Local Unions located in one city they must be represented in a Carpenters' District Council, composed exclusively of delegates from Local Unions of the United Brotherhood, and they shall be governed by such Laws and Trade Rules as shall be adopted by the District Council and approved by the Local Unions and the First General Vice-President. The General President shall have power to order such Local Unions, as he may deem in his wisdom for the best interests of the organization at large, to affiliate with such District Council, as in his judgment they should, and to settle the lines of jurisdiction of such District Council, subject to appeal.

B District Councils may be formed in localities other than in cities where two or more Local Unions in adjoining territory request it, or when in the opinion of the General President the good of the United Brotherhood requires it. The District Council so formed shall be governed by the same General Laws governing District Councils in cities.

C District Councils shall have the power to make By-Laws, Working and Trade Rules for the government of the Local Unions and the members of the United Brotherhood working in their districts, which shall in no way conflict with the Constitution and International Laws of the United Brotherhood; and must be adopted by referendum vote of the members and approved by the First General Vice-President before becoming law, and their representation shall be according to membership.

D The jurisdiction of the District Council shall be as provided for by the Constitution and Laws of the United Brotherhood and named in their charter.

E District Councils shall have the power to enforce Working and Trade Rules in their respective localities; they cannot make arrangements to debar their members from working for contractors or bosses other than those connected with the Bosses' or Builders' Association. Nor shall they affiliate with any central organization whose Constitution or By-Laws conflict with those of the United Brotherhood. They shall adopt By-Laws and Rules governing local, strike and other donations, except sick donations, and shall provide for and hold trial of all violations and may impose such penalty as they may deem the case requires, subject to an appeal to the General President

and thence to the General Executive Board. The decision of the G. E. B. on violations of Trade Rules is final.

F By-Laws and Trade Rules for the government of the District Council and Local Unions must be submitted by the District Council to the Local Unions represented in said district, and must be adopted by a majority of members voting, at a special meeting called therefor, and shall in no way conflict with the Constitution and International Laws of the United Brotherhood.

G Local Unions other than those working on building material shall not have a voice, vote or delegate in any District Council of the building tradesmen, but may establish District Councils of their own under By-Laws approved by the First General Vice-President.

H Examining Boards may be established by District Councils or Local Unions where no District Council exists. They shall examine candidates as to their qualifications for membership in the United Brotherhood and must report their findings on all applicants in writing. The examinations shall consist of a practical test in the branch of trade in which the applicant desires employment.

JURISDICTION OF STATE AND PROVINCIAL COUNCILS

A Section 27. State and Provincial Councils may be formed voluntarily by Locals or Ladies' Auxiliaries of this United Brotherhood, which may have power to adopt, by a referendum vote, such laws as will assist in organizing and strengthening the Locals of their respective States and Provinces. All Laws of State and Provincial Councils must be submitted to the First General Vice-President of this United Brotherhood for approval, and all officers and members of such Councils shall be held responsible for compliance with all Laws governing the United Brotherhood. Where State or Provincial Councils are organized, composed of as many as five (5) Local Unions of the State or Province, representing 55 per cent of the membership, it shall be obligatory on all Local Unions to affiliate with said Council.

B State and Provincial Councils have the power to make laws to govern such State and Provincial Councils, which shall in no way conflict with the Constitution and Laws of the United Brotherhood, and must be adopted by referendum vote of the members and approved by the First General Vice-President before becoming law.

C The jurisdiction of Stat or Provincial Councils shall be the State or Province for which they are chartered, unless otherwise provided in the Constitution and Laws of the United Brotherhood.

JURISDICTION OF AUXILIARY UNIONS AND DISTRICT COUNCILS

A Section 28. The jurisdiction of Auxiliary Unions or District Councils shall be as provided for by the Constitution and named in their charter.

B Auxiliary Unions may make laws to govern their members in the same manner as the Local Unions, and may form Auxiliary Councils in their jurisdiction, buf in no case shall members of Auxiliary Unions be allowed to work outside of the jurisdiction covered by their charter, or allowed to transfer to a Local Union of the United Brotherhood, without taking an examination as to their knowledge of the trade and paying the initiation fee of said Local Union.

C Any member in good standing is permitted to become a member of a Ladies' Auxiliary Union.

ADMISSION OF LOCAL UNIONS

A Section 29. A Local Union may be organized by ten or more journeymen carpenters or joiners, who must apply to the General Secretary and send Fifteen Dollars ($15.00) for outfit necessary for the institution of their Local Union. Then the General Secretary shall forward charter and complete outfit, provided the applicants are qualified, according to the Constitution and Laws of the United Brotherhood. The outfit shall consist of the following articles: Seal, Rituals, gavel, one-hundred page minute book, one-hundred page ledger, one-hundred page day book, one Treasurer's cash book, one Recording Secretary's order book, one Financial Secretary's receipt book, one Treasurer's receipt book, one pad of official letterheads, one pad of applications, twenty Due Books, twenty Constitutions and the usual amount of report blanks furnished by the General Office. The Charter is at all times the property of the United Brotherhood.

B More than one Union may be chartered in the same city, provided no reasonable objections are offered by the Local Union or District Council in said locality.

C All business of this United Brotherhood at meetings of Local Unions shall be recorded in the English language, and it shall be the duty of the General President to revoke

the charter of any Local Union within the United States that fails to comply with this section.

SUSPENDED AND LAPSED LOCAL UNIONS

A Section 30. If at any time a Local Union should withdraw, lapse, dissolve, be suspended or expelled, all property, books, charter and funds held by, or in the name of, or on behalf of said Local Union must be forwarded immediately by express to the General Secretary, to be held in safe-keeping for the United Brotherhood as Trustee for the carpenters in that locality until such time as they shall reorganize.

B The officers and members of said Local Union will be held responsible for compliance with the above section within thirty days after such dissolution, suspension or withdrawal, under penalty of being prosecuted by law, and forfeiture of membership and donation in this United Brotherhood.

C A member of a lapsed or suspended Local Union, if he is in good standing, can take a clearance to the nearest Local Union in his vicinity, upon application to the General Secretary, who shall issue same. Said clearance can be sent by mail to the nearest Local Union and can be accepted without requiring the personal attendance of the member.

LOCAL OFFICERS

A Section 31. The officers of a Local Union shall be a President, Vice-President, Recording Secretary, Financial Secretary, Treasurer, Conductor, Warden and three Trustees. Seven members shall constitute a quorum.

B All officers shall serve for a term of one year, or until their successors are elected, qualified and installed, with the exception of the Trustees, who shall be elected in such manner that the term of one Trustee shall expire annually. Neither the President, Treasurer, Financial Secretary nor Recording Secretary can act as Trustee.

C The nomination of local officers shall take place on the first regular meeting night in June, but may be reopened the night of election, except when the Australian ballot is used.

D A member cannot be nominated for office, delegate or committee unless he is present on the night of nomination, except he is in the ante-room on business authorized by the Local Union, or out on official business; nor shall he be eligible unless he is a journeyman carpenter working at the trade or employed by the organization, and has

been twelve months a member in good standing of the Local Union prior to nomination, unless the Local Union has not been in existence the time herein required. Honorary members are not eligible to hold office.

E The election of all local officers shall be by ballot, and it shall require a majority of all votes cast to constitute an election, but any Local Union may elect its officers by the Australian ballot system, and the nomineees receiving a plurality of votes shall be declared elected.

F When there are more than two candidates for the same office, at every unsuccessful balloting the one receiving the lowest number of votes shall be dropped, the voting to then continue until one has secured an absolute majority over all, unless the election is held under the Australian ballot system; then the nominee receiving a plurality of all votes cast shall be declared elected.

G At all elections of local officers the presiding officer shall appoint two tellers. He shall then announce the names of the candidates in rotation, and a vote shall be taken.

H The tellers shall then collect and count the ballots cast in the presence of the meeting. The Recording Secretary shall act as Clerk of Election, and shall take charge of the ballots and preserve the same until after the installation of officers. The presiding officer shall declare the result of the ballot and announce the name of the elected candidate.

I The election of officers shall take place on the second meeting night in June, and all members shall be notified by mail to attend the meeting at which the officers are to be elected.

J The installation of officers shall take place on the first meeting night in July. In case an officer does not appear for installation within two regular meetings thereafter, his office must be declared vacant.

VACANCIES IN LOCAL OFFICES

A Section 32. If any officer shall fail to discharge the duties of his office for three successive meetings, without satisfactory excuse, the office shall be declared vacant by the President, and an election to fill the same shall take place at the next stated meeting.

B Vacancies occurring in any office of the Local Union shall be filled at the next regular meeting, in the same manner as provided for in the election of officers. During the temporary absence of any officer, the President shall appoint a member to fill the vacancy pro tem.

C Any officer of the Local Union may be removed after due trial upon charges preferred against him and sustained by a two-thirds vote of the members present.

D In the absence of both the President and the Vice-President, the Recording Secretary shall call the meeting to order, and the Local Union shall elect a President pro tem.

DUTIES OF PRESIDENT

A Section 33. The President shall preside at all meetings, preserve order and enforce the Constitution and Laws of the United Brotherhood; he shall decide all questions of order, subject to an appeal to the Local Union. He shall have the casting vote in case of a tie, and shall sign all orders on the Treasurer authorized by the Local Union.

B The President shall appoint all committees or such other officers as may be necessary, unless otherwise ordered, and shall have power to order the Recording Secretary to call special meetings when requested in writing by five (5) members in good standing, and shall perform such other duties as are required by his office.

DUTIES OF VICE-PRESIDENT

Section 34. The Vice-President shall assist the President in the discharge of his official duties and fill his place in case of absence, death, removal or resignation, until such time as a President may be elected.

DUTIES OF RECORDING SECRETARY

A Section 35. The Recording Secretary shall keep the correct minutes of each meeting, read and preserve all documents and correspondence, issue all summons for special meetings, have charge of seal and affix the same on all official documents, draw and sign all legal orders on the Treasurer and conduct all official correspondence.

B The Recording Secretary shall keep a record of all applications for membership, send a list of the names and addresses of all new officers to the General Secretary, also all changes, and report to the Local Union the expenditures at the close of each meeting, and perform such other duties as the Local Union may direct, or as prescribed in the Constitution and Laws of the United Brotherhood.

C The Recording Secretary shall notify all members of the Local Union to present their due books to the Trustees during the first month of each quarter for the purpose of comparing them with the books of the Financial Secretary. A fine of not less than Twenty-five Cents (25c) shall be

imposed on each member who fails to comply with this section.

DUTIES OF FINANCIAL SECRETARY

A Section 36. The Financial Secretary shall receive all moneys paid into the Local Union and immediately make entry of same in the Day Book with ink. He shall, at the close of each meeting, pay the same to the Treasurer, from whom he shall take a receipt. He shall keep a correct account of each member, with full name and residence.

B The Financial Secretary shall enter and date each payment on the member's Due Book, and sign the same, and shall enter in his Ledger the exact date and full amount of each payment. He shall keep the Day Book and announce before adjournment of the Local Union the detailed receipts of each meeting.

C The Financial Secretary shall not accept dues from any member working or residing in another district unless said dues are accompanied with a statement from the Business Agent or Secretary of the Local Union or District Council that he has and is complying with the rules of the locality where the member resides or is employed. He shall not receive the dues of members in the interim between meetings. After the last meeting night in the month he shall receive dues at his home or office up to and including the last day of the month.

D The Financial Secretary shall make a written report monthly to the General Secretary on the official blanks furnished for that purpose; said report must be sent to the General Secretary not later than the tenth day of each month for the month preceding, under penalty of Two Dollars ($2.00) fine. He shall report not later than the second meeting night of each quarter to the Local Union as to the numerical and financial standing of the Local Union for the preceding quarter, and shall give bond as required by the Constitution and Laws of the United Brotherhood in such amount as the Local Union may decide.

E Local Unions having an established office and a permanently employed Financial Secretary shall have the power, by regularly passed motion, to designate the books and other property to be kept at the office, and also to delegate such duties to the Financial Secretary as may be deemed expedient for proper transaction of its business.

F The Financial Secretary shall have full control of all supplies, and shall issue the same, subject to orders of the Local Union.

61

DUTIES OF TREASURER

A Section 37. The Treasurer shall receive from the Financial Secretary all moneys collected and give receipt for and deposit same in the name of the Local Union in such bank or banks as may be designated by the Local Union. He shall make no disbursement without the sanction of the Local Union, and only on an order issued by the Recording Secretary and signed by the President.

B The Treasurer shall make an itemized statement on the first meeting night of each quarter for the preceding quarter, to the Local Union, of all moneys received and paid out by him, and submit his books and vouchers for inspection at any time when called upon, and perform such other duties as the Local Union may require.

C The Treasurer of the Local Union shall send the per capita tax to the General Secretary the first meeting night of each month, for the month preceding, also $5.00 on each new Beneficial and Semi-Beneficial member initiated excepting Apprentices and Honorary members. All moneys shall be payable by post office money order, bank draft or express, to the General Secretary, who shall receipt for the same.

D The Treasurer shall give bond as required by the Constitution and Laws of the United Brotherhood in such amount as shall be fixed by the Local Union as security for the funds and the faithful performance of his duties, and he shall not at any time be allowed to hold more moneys than his bond amounts to. He shall receive a salary of at least One Dollar ($1.00) per annum.

DUTIES OF CONDUCTOR

Section 38. The Conductor shall examine all present on night of meeting and report to the President all without the Password. It shall be his duty to allow no one to remain without the Password. He shall obtain the names of all candidates awaiting initiation and report the same to the President, he shall conduct the candidate through the initiation ceremony, and shall perform all duties pertaining to his office. He shall be furnished an assistant when necessary.

DUTIES OF WARDEN

Section 39. The Warden shall take charge of the doors at the meeting, and see that no one but members with the current quarterly Password shall enter. Members without the Password he shall announce by name, and if correct,

he shall admit them, and the Vice President shall furnish them the Password.

DUTIES OF TRUSTEES

A Section 40. The Trustees shall have the supervision of all funds and properties of the Local Union, subject to such instructions as they may receive from time to time from the Local Union.

B It shall be the duty of the Trustees to see that the Treasurer deposits in such banks as the Local Union may designate, all moneys over and above such sums as the Local Union may decide shall be left in his hands for contingent expenses or legal bills, instructing the officers of the bank to pay no money on account of the Local Union except on order issued by the Recording Secretary and signed by the President and stamped with the seal of the Local Union.

C The Trustees shall audit all books and accounts of the Financial Secretary and Treasurer, and examine the bank book of the Treasurer monthly, and see that it is correct, and shall report to the Local Union, in writing, and semi-annually to the General Secretary, on blanks supplied from the General Office, and shall see that the Financial Secretary and Treasurer are bonded through the General Office, and perform such other duties as are provided for in the Constitution and laws of the United Brotherhood, and perform any other duties their Local Union may direct.

DUTIES OF COMMITTEES

A Section 41. All committees shall perform the duties assigned to them within the time specified, and shall report in writing, and no person shall be exempt from serving on a committee when called upon, except the Recording and Financial Secretaries, unless excused by vote of the Local Union, or who is already a member of some other committee. No member can be appointed on a committee when absent from the Local Union.

B Committees holding money, the property of the Local Union, either as balances or appropriations, shall, at the next regular meeting after completing their work, deliver the same into the hands of the Financial Secretary, together with all vouchers and accounts, and in no case shall a committee be discharged until all bills are paid, and they are reimbursed for their expenses, or paid for time lost, if any, provided the Local Union has originally agreed to do so.

C The first person named on a committee shall be its chairman until another is chosen by the committee.

QUALIFICATIONS FOR MEMBERSHIP

A Section 42. There shall be four classes of membership, viz: Beneficial, semi-beneficial, honorary and auxiliary.

B Beneficial members are those who are admitted as prescribed by the Constitution and International Laws of the United Brotherhood for beneficial members, and who pay the dues provided in the Laws of the United Brotherhood, also the By-Laws of the Local Union.

C Semi-beneficial members are those admitted as prescribed by the Constitution and International Laws of the United Brotherhood for semi-beneficial members, and pay dues provided by the Laws of the United Brotherhood and the By-Laws of the Local Union.

D Honorary members are those who join at the age of sixty years or over, or who have received their disability donations and pay no tax to the General Office and are not entitled to any of the donations prescribed in the International Laws of the United Brotherhood, nor shall they be representatives of their Local Union to any other body.

E Auxiliary members are those who secure membership under auxiliary charters, and are not entitled to the benefits prescribed for Beneficial or Semi-Beneficial Members.

F A candidate to be admitted to Beneficial or Semi-Beneficial membership in any Local Union of the United Brotherhood must not be less than 17 and not more than 60 years of age and must be an apprentice or journeyman carpenter or joiner, Millwright, Railroad Carpenter, Bench Hand, Stairbuilder, Furniture Worker, Shipwright, Boat Builder, Reed and Rattan Worker, Under Pinner and Timberman, Pile Driver, Shorer and Housemover, Bridge, Dock and Wharf Builder, Box Maker, Floor Layer and Finisher, Cabinet Maker, Ship Carpenter Joiner and Caulker, Car Builder, Logger, Lumber and Sawmill Worker, and all those engaged in the running of woodworking machinery, or engaged as helpers to any of the above divisions or sub-divisions, or the handling of material on any of the above divisions or sub-divisions.

G When the term "carpenter and joiner" is used, it shall mean all the sub-divisions of the trades as herein specified. A candidate must be of good moral character and competent to command standard wages.

H A candidate for membership cannot join any Local Union other than the one in the District in which he works unless permission be granted him by the Local Union or District Council where he works.

I A person who has been expelled or rejected in any Local Union of this United Brotherhood shall not be eligible to membership in any other Local Union except by consent of the Local Union of which he was a member, or in which he was rejected, and shall not be received into any Local Union again except by a two-thirds vote of the Local Union.

J Any candidate applying for admission in any Local Union under the jurisdiction of the United Brotherhood, must be a citizen of one of the countries included in said jurisdiction, or must furnish proof of his intentions to become a citizen in the country where he makes application for membership. All applications of candidates shall give the date and place of court wherein they took out their first citizenship papers, and after five years from said date if they have not taken out their final papers, they shall be dropped from the roll of the organization.

K An apprentice of good moral character between the ages of seventeen and twenty-four years may be admitted to membership as a beneficial member, and after having served four years as an apprentice, and qualifying in accordance with the Constitution and International Laws of the United Brotherhood, shall be classed as a Journeyman, and notification of his transfer to the journeyman class shall be forwarded in the next monthly report to the General Secretary for record. The initiation fee for an apprentice shall be the Constitutional fee of Ten (10.00) dollars.

L An employer who employs two or more journeymen may have one apprentice, but the number may be increased at such rate as the District Council or Local Union having jurisdiction may decide.

M All apprentices shall hold agreement between the District Council or Local Union having jurisdiction and his employer, and any apprentice who can be continuously employed by one employer and who violates such agreement shall be debarred from further membership in the United Brotherhood, unless such apprentice shall have sufficient cause to make complaint to the District Council or Local Union against his employer, and which complaint on investigation should be sustained.

N When an employer cannot provide continuous employment for an apprentice and he is obliged to seek work with another employer, he shall have the actual time he works for each succeeding employer entered on his Due Book.

O District Councils, where such exist, and Local Unions, where there are no District Councils, shall have power to enforce apprentice agreements, to establish a minimum wage scale per week for each succeeding year of the apprenticeship, and may extend the term of the apprenticeship one year, upon satisfactory proof that the applicant cannot command the minimum scale of wages paid journeymen carpenters.

P The presiding officer of the District Council or Local Union, where no District Council exist, shall appoint a committee of which the Business Agent shall be a member, to be known as the Apprenticeship Committee. The duties of said committee shall be to examine all applicants as apprentices to see that they receive the prevailing scale of wages and fair treatment from employers and have all possible opportunity to secure regular employment. The Committee on Apprentices shall make a quarterly report, showing the number of apprentices in their district, where employed, and the conditions under which they are working. Applicants for apprenticeship between the ages of 16 and 17 years shall be registered with the District Council or Local Union, shall be furnished a recognition card, showing their intention to become members, and shall be given the same attention by the Apprenticeship Committee as apprentices who are members.

Q The Apprenticeship Committees of all Local Unions are urged to call upon their employers and upon their Local Boards of Education, with the view of starting part-time classes where technical training may be given apprentices.

R The First General Vice-President shall compile such information as is available on the plans of Local Unions and District Councils where training classes are already started, this information to be printed and sent to Local Unions or District Councils that they may be better equipped to inaugurate classes in their Districts.

S Any member incapacitated by age or accident may be permitted to obtain employment under the regular scale of wages by the consent of his Local Union or District Council.

T No member of the United Brotherhood shall lump, subcontract or work at piece work for any owner, builder, building material manufacturer or contractor. For a violation of this Section or any part of it he shall be fined

not less than Ten Dollars ($10.00), or be expelled from the United Brotherhood, or both.

U Where a member contracts work or becomes a foreman, he must comply with Union rules and hire none but members of the United Brotherhood.

V No member of the United Brotherhood can remain in or become a member of more than one Local Union, or any other organization of carpenters and joiners, or any mixed union of building tradesmen, under penalty of expulsion. Any member who accepts employment under non-union conditions, during the time of a strike or lockout, or being employed as an armed guard during a strike of employes, shall not be entitled to any donations.

W No member can hold office or vote on wage or working conditions unless he has been a member of the Local at least twelve months before election.

ADMISSION OF MEMBERS

A Section 43. A candidate qualified and who desires to become a member of any Local Union of the United Brotherhood must fill out the regular application blank in duplicate and sign his name to it and have the same certified to by two members in good standing, as vouchers for the applicant's fitness to become a member. And after the application has been favorably acted on the Financial Secretary shall send the original application to the General Secretary, together with monthly report. The duplicate shall be filed away by the Recording Secretary for future reference.

B The application of the candidate must be presented to the Financial Secretary with the full initiation fee, which shall be not less than Ten Dollars ($10.00) and a sum equal to one month's dues, together with the proportionate part of month in which he is initiated, before he can be obligated, and lay over one week for investigation, and shall be referred to a special committee of three, who shall in the meantime inquire into his qualifications to become a member and report at the next regular meeting of the Local Union, making such recommendations as they deem proper, or may be elected and initiated at the same meeting if the Investigating Committee reports favorably.

C Upon hearing the report of the committee the candidate shall be notified to present himself before the members, after which he shall be voted or balloted for, and if elected, shall be initiated, and hand in his name and address to the Financial Secretary, who shall place the same on the

books of the Local Union and furnish him with a membership Due Book and a copy of the Constitution and Laws of the United Brotherhood and Local By-Laws.

D A candidate failing to present himself before the members for action on his application within a space of four weeks after his application has been presented by the Recording Secretary shall, unless he gives good and sufficient reasons, forfeit his initiation fee. A two-thirds vote shall be necessary to elect a candidate for membership.

E When a candidate is rejected for three consecutive meetings in the Local Union to which he first applied, his initiation fee shall be returned and the Recording Secretary shall notify the General Secretary of such rejection. His application shall not again be accepted before a period of six months from date of rejection.

F When an applicant for initiation has reached the age of sixty years or over, he shall be admitted only as an honorary member at the constitutional fee of Ten Dollars ($10.00); he shall not be charged any dues, but shall pay for a Working Card not less than Twenty-five (25) Cents per month to assist in conducting the working conditions of the District. He shall not be entitled to any of the donations provided for in the Constitution and Laws of the United Brotherhood. No tax or assessment of any kind shall be paid on such a member to the General Office.

G Members of foreign bona fide wood-workers' organizations not in arrears in their dues to their home organizations more than three months can be admitted free of initiation fee, but shall be subject to the provisions of the Laws of the United Brotherhood governing donations.

H A member three months in arrears shall not be entitled to the Password, or a seat, or office in any meetings of the Local Union.

I Each member will be entitled to all the rights and privileges of this United Brotherhood, as prescribed in the Constitution and Laws of the United Brotherhood, by strictly adhering to his obligation and by him and his Local Union obeying the Constitution, Laws and Rules of the United Brotherhood.

J A member in good standing can visit any Local Union provided he is in possession of the current quarterly Password and his membership Due Book.

K No member of this United Brotherhood will be allowed to violate the Trade Rules of the locality in which he works.

L No member shall be allowed to injure a fellow-member by undermining him in prices or wages, nor commit any

other willful act by which his reputation is injured or his employment jeopardized.

M All business of the Local Union shall be kept strictly private from persons outside of the Local Union unless publication of the same be authorized by vote of the Local Union.

N Any violation of the three preceding Sections shall be punishable by a fine of not less than Five Dollars ($5.00), or by expulsion, or both.

O A member who divulges the quarterly Password for any purpose, other than to enter the meeting, shall be expelled.

P Each member is required to keep the Recording Secretary and Financial Secretary properly notified of his correct place of residence and any change of same under penalty of One Dollar ($1.00) fine.

Q A member can remain a contractor, or enter into the business of contracting, provided he pays the union scale of wages, obeys Trade Rules and hires none but members of the United Brotherhood and complies with the Constitution, and does not do any lump work, piece work or subcontract for a carpenter contractor, and further provided, he furnish material and labor on the work for which he contracts, and that he is not or does not become a member of any contractors' or employers' association. Any violation of this rule to be punished by a fine or expulsion. He shall not be eligible as an officer or delegate of his Local Union, and shall not have a vote on the wage question.

FINANCES AND DUES

A Section 44. Beneficial and semi-beneficial members shall pay not less than One ($1.00) Dollar per month dues, Five (5) Cents of which shall be paid by each of such members as subscription to the official monthly Journal, "The Carpenter," and shall be so applied. No officer or member shall be exempt from paying dues or assessments, nor shall the same be remitted or cancelled in any manner.

B Monthly dues shall be charged on the books on the first of each month, but a member does not fall in arrears until the end of the month in which he owes a sum equal to three months' dues.

C Each beneficial Local union shall pay to the General Secretary $5.00 on each new member admitted, excepting apprentices and honorary members, also Seventy-five (75c) Cents per month for each member in good standing, Forty (40c) Cents of which shall be used as a fund for the general management of the United Brother-

hood and payment of all death and disability donations prescribed by the Constitution and Laws of the United Brotherhood, together with all legal demands made upon the United Brotherhood. The balance of Thirty-five (35c) Cents, together with moneys received from new members, to be placed in a special fund for "home and pension" purposes.

D Each semi-beneficial Local Union shall pay to the General Secretary $5.00 on each new member admitted, also Twenty-five (25c) Cents per month for each member in good standing, which shall be used as a fund for the general management of the United Brotherhood, and payment of all death donations prescribed by the Constitution and laws of the United Brotherhood, together with all legal demands made upon the United Brotherhood.

E The per capita tax shall be held as a standing appropriation. An order for the same shall be signed by the President and Recording Secretary without requiring a vote of the Local Union.

F When a member falls in arrears for three months' dues, he must be reported to the General Secretary as being in arrears in the report for the third month, and per capita tax shall be deducted for that month, and he shall not be again reported until he falls six months in arrears, when he shall be reported as suspended, but not again deducted from the membership. If a member at any time pays any part of his arrearages and does not pay for the current month, he still remains in arrears and should not be reported by the Financial Secretary in his report to the General Office. If at any time he should square up his arrearages, the Financial Secretary shall report same to the General Secretary, giving date when said arrearages were paid (day and month), which must include the payment of dues for the month in which he pays said arrearages, and the per capita tax for the months since which he was last reported in arrears must be added to the tax forwarded by the Treasurer to the General Secretary.

G A Local Union when three months in arrears to the United Brotherhood or to a District Council shall be suspended from all donations until three months after all arrearages are paid. It is the duty of the members of a Local Union to see that the tax of the Local Union is promptly paid and receipts for the same read at the meetings.

MEMBERS IN ARREARS

A Section 45. When a member owes a sum equal to three months' dues, he is not in good standing and is thereby suspended from all donations and will not again be entitled to donations until three months from the date he has paid said arrearages, which payment must include the payment of dues for the month in which said payment is made. A member in arrears must square all arrearages in full within one year or stand suspended.

B A member owing a Local Union a sum equal to six months' dues shall have his name stricken from the list of membership without a vote of the Local Union. If desiring to rejoin the Brotherhood he may be readmitted only as a new member, subject to such readmission fee as provided for in the By-Laws of the Local Union or District Council where he rejoins. The Local Union readmitting the ex-member shall ascertain the reasons for his having been dropped from membership and if he was suspended for non-payment of dues shall collect from him an additional sum of Five ($5.00) Dollars, to be forwarded to the Local Union of which he was formerly a member. If, however, said ex-member owed any fines or assessments at the time he was dropped from membership in the Brotherhood the Local Union readmitting him shall collect the amount of the indebtedness and forward it, together with the sum of Five ($5.00) Dollars to the Local Union to which he formerly belonged.

CLEARANCE CARDS

A Section 46. A member who desires to leave the jurisdiction of his Local Union or District Council to work in another jurisdiction must surrender his Working Card and present his Due Book to the Financial Secretary, who shall then fill out his Clearance Card and affix seal thereto. It shall be compulsory, except in case of strike or lockout, for the Local Union to issue said card, providing the member has no charges pending against him and pays all arrearages, together with current month's dues. Said Clearance Card shall expire one month from date of issue. It shall be optional with a Local Union or District Council to issue Clearance Cards in a jurisdiction where a strike or lockout is in effect. A member may leave such jurisdiction without a Clearance Card to seek work in another jurisdiction where no strike or lockout exists, provided he presents a statement over the Seal of the Local Union or District Council in which he holds membership, showing

that a strike or lockout is in effect in said jurisdiction. He shall pay the prevailing charge for a Working Permit in the jurisdiction where he goes to work.

B It is compulsory for the member to report and deposit his Clearance Card at the office of the District Council, or Local Union where no District Council exists, before securing work, pending a meeting of the Local Union, and comply with all local laws. And in no case shall the Financial Secretary accept dues other than to secure Clearance Card from a member working in the jurisdiction of any other Local Union or District Council, without the consent of such Local Union or District Council. It shall be the duty of the Financial Secretary accepting dues from a member for Clearance Card who is working in another jurisdiction to immediately report same to the District Council or Local Union where no District Council exists under penalty of a fine of Five Dollars ($5.00) for the first offense, Ten Dollars ($10.00) for the second offense, and for the third offense suspension from all Local office for a period of two (2) years.

C A member who desires to work in another jurisdiction from which he would return home daily, or who does not desire to transfer his membership, shall, before going to work, secure a Working Permit in writing from the Local Union or District Council in whose jurisdiction he may go to work. He shall pay for such Working Permit a charge of not less than Seventy-five Cents (75c) per month, and if less than two years a member he shall pay any difference in initiation fee, and shall be subject to all local assessments levied exclusively for direct trade purposes by and for the use of the Local Union or District Council.

D No Local Union shall have the right to collect dues again for the month paid on a Clearance Card. The Local Union issuing the card shall pay to the General Secretary the tax for said member for the month only in which the card is issued, and he shall be considered a member of that Local Union until he deposits his card, when he becomes a member of the Local Union wherein said card has been deposited.

E Any General Officer, while employed by the United Brotherhood, shall not be required to take a Clearance Card from the Local Union of which he is a member at the time of his election or appointment.

F A member of a Local Union taking out a Clearance Card before he is two years a member shall pay, where the initiation fee is higher into the Local Union accepting the

Clearance Card, a sum equal to the difference in initiation fee before the Clearance Card can be accepted.

G On entering a Local Union a member with a Clearance Card shall present his Due Book to the President, who shall appoint a committee of three to examine the applicant and his Due Book and report at once. If the Clearance Card and Due Book are found correct, and the identity of the member established to whom the Clearance Card was granted, he shall be admitted to the Local Union as a member thereof, provided there is no strike or lockout in effect in that district.

H On deposit of said card the Financial Secretary receiving it must sign and affix the seal to the coupon and forward it to the General Secretary as evidence of its deposit, along with his monthly report. The Local issuing the Clearance Card shall refund to the member all dues in excess of the current month. The Financial Secretary receiving the Clearance Card shall immediately report the same to the Financial Secretary issuing the Clearance Card under penalty of Five ($5.00) Dollars fine.

I A member who re-deposits his Clearance Card must present his Due Book to the President, who shall require a record of same be made with the Recording Secretary, and the Financial Secretary shall report the return of said Clearance Card to the General Secretary in his monthly report.

RESIGNATIONS OF MEMBERS

A Section 47. A member can withdraw or sever his connection with the United Brotherhood by resignation in writing, and it shall require a two-thirds vote of the members present at a regular meeting to accept a resignation. A member who resigns can be readmitted only as a new member. A member wishing to withdraw or sever his connection with the United Brotherhood shall present his resignation in writing, which shall be laid over two weeks for investigation. A member resigning shall be given a Resignation Card, which shall indicate an honorary withdrawal from the United Brotherhood. Such card shall be furnished by the General Secretary on application by Local Union, on payment of Fifty (50) Cents for each card.

B A Local Union shall not accept the resignation of a member when it is known he submits the same to be left free to violate Trade Rules, and when a member resigns, or is expelled for non-payment of fine, or a carpenter, as covered by the Constitution and Laws of the United Broth-

erhood, works to the detriment of the United Brotherhood, the Local Union or District Council may place a special initiation fee against such person, not to exceed Fifty Dollars ($50.00) over their regular initiation fee for new or ex-members, as provided for in their By-Laws. No person who engages in the sale of intoxicating drinks can be admitted or retained as a member. Any member engaging in the sale of intoxicating drinks shall forfeit all rights and donations at the time of engaging in such occupation without further notice from his Local Union.

MEMBERS ENTITLED TO DONATION

A Section 48. On the death of a member in good standing, his wife, or legal heirs as named on his application, shall be entitled to the member's funeral donation as prescribed in the Constitution and Laws of the United Brotherhood. A member may change his beneficiary provided, the change is made to wife, or blood relative. Such change shall be made on blank form to be furnished Local Unions by the General Secretary. The member making a change of beneficiary shall sign the form of change in the presence of President and Recording Secretary of his Local Union, who shall sign as witnesses; provided however, if said member is not in the jurisdiction of his Local Union at time change is made, then he can have same sworn to before a Notary Public, or any officer authorized to administer oaths.

B If a member in good standing dies without leaving any legal heirs, the Local Union shall see him respectably interred. The officers or a committee of the Local Union shall attend his funeral and the United Brotherhood shall pay the funeral expenses, but in no case shall these expenses exceed the full amount of donation to which the member is entitled at time of death, nor shall the United Brotherhood be held liable for any further donations in the name of the deceased.

C In the case of any member whose disability or death is caused by intemperance, or his own improper conduct, or by any accident or disease incurred previous to joining the United Brotherhood, or by exposing himself to risks to which men in the carpentry industry are not usually liable, neither he nor any person for him shall have any claim on the funds of the United Brotherhood.

D No claim for donation arising out of any sickness or accident occurring while a member is in arrears shall be allowed.

BENEFICIAL MEMBER'S FUNERAL DONATIONS

A Section 49. A beneficial member to be entitled to donations must be not less than seventeen and not over sixty years of age at the time of admission to membership, and, when he joined, must have been in sound health and not afflicted with any disease or subject to any complaint likely to endanger his health or cause permanent disability.

B A beneficial member will be entitled to the donations as prescribed in the Constitution and Laws of the United Brotherhood; provided, he is over one year a contributing or financial member in good standing, and when three months in arrears he shall be debarred from all donations until three months after all arrearages are paid in full, including the current month.

C Donations for journeymen between the ages of twenty-one and fifty years shall be:

One year's membership.....	$ 50.00
Two years' membership.....	100.00
Three years' membership.....	150.00
Four years' membership.....	200.00
Five years' membership or more..	300.00

D An apprentice or a candidate between the ages of fifty (50) and sixty (60) years of age when admitted to membership shall be entitled to the donations on condition that they have been a member the required length of time and that they were in good health at the time of their initiation, and in good standing at the time of death, provided, however, they are over two years contributing or financial members in good standing, and when owing a sum equal to three months' dues they shall be debarred from all donations until three months after all arrearages are paid in full, which payment must include the payment of dues for the month in which the payment is made. They shall not be entitled to wife or disability donations. Donations for Apprentices and members admitted between the ages of fifty and sixty years shall be:

Two years' membership----------	$ 25.00
Three years' membership----------	50.00
Five years' membership----------	75.00
Ten years' membership or more----	125.00

75

WIFE FUNERAL DONATION

A Section 50. A beneficial member, between the ages of twenty-one and fifty years at the time of admission to membership, or a member who has been transferred from the classification of apprentice to journeyman, lawfully married, shall, on the death of his wife, be entitled to the wife funeral donation as prescribed in the Constitution and Laws of the United Brotherhood, on condition that his wife was sound in health at the time of his admission to membership: provided however, when he owes a sum equal to three months' dues, he shall be debarred from all donations until three months after all arrearages are paid in full, which payment must include the payment of dues for the month in which the payment is made.

B An applicant eligible to beneficial membership, if married, whose wife is in ill health, may be admitted, but in the event of her death he shall not be entitled to the wife funeral donation. Should the wife be sick at the time her husband joins the Local Union, then said wife shall, after she becomes well, be examined by a physician, who shall furnish a certificate of health to the Local Union.

C All rules and provisions as to health and conduct applying to a claim for a member's funeral donation shall apply to a claim for a wife's funeral donation for one wife only.

The wife funeral donation shall be:

D

One year's membership	$25.00
Two years' membership	50.00
Three years' membership or more	75.00

DISABILITY DONATIONS

A Section 51. A beneficial member, not less than twenty-one and not more than fifty years of age at the time of admission to membership, or a member who has been transferred from the classification of apprentice to journeyman, in good standing, who becomes permanently disabled for life by accidental injuries received not less than one year after becoming a member, and is thereby totally incapacitated from ever again following the trade for a livelihood, shall be entitled to a disability donation as prescribed in these laws provided, however, when he owes a sum equal to three months' dues, he shall be debarred from all donations until three months after all arrearages are paid in full which payment must include the payment of dues for the month in which the

payment is made. Payment of disability donation shall relieve the United Brotherhood from any further obligation, and upon the payment of his claim the Financial Secretary shall strike his name from the books, and he shall not be eligible for readmission in any Local Union of the United Brotherhood only as an honorary member.

B A permanent disability claim must be filed with the General Treasurer within two years from the date of the accident. Failure to do so shall invalidate the claim.

C Permanent disability shall consist of total blindness; the loss of an arm or leg, or both; the total disability of a limb; the loss of four fingers of one hand; or being afflicted with any physical disability resulting from accidental injuries.

D Whenever such disability has occurred through actual negligence, or the use of alcoholic drinks on the part of the disabled member, he shall not be entitled to donations.

E In all claims for disability donations the claimant shall be carefully and thoroughly examined by at least two competent and reputable physicians selected by the Local Union, and they shall send a certificate in writing to the Local Union as to the nature and extent of the disability and their opinion whether the claimant is totally disabled for life within the meaning of the Laws of the United Brotherhood, the expense of said examination to be paid by the Local Union, and the report of said physicians be sent to the General Treasurer.

F When a beneficial member, not less than twenty-one and not more than fifty years of age at the time of admission to membership, or a member who has been transferred from the classification of apprentice to journeyman, in good standing, meets with accidental injuries which might totally and permanently disable him from ever again following any branch of the trade for a livelihood, any member shall report to the Local Union within thirty (30) days, and the Local Union shall appoint a committee to visit the member and secure from him a detailed statement in writing as to how, when and where the accident happened, the names of eyewitnesses, if any, and retain same on file pending possible future claim for disability donation. The amount of disability donations shall be computed from the date of Initiation to the date of accident.

The disability donation shall be:

G

One year's membership.....	$ 50.00
Two years' membership.....	100.00

77

Three years' membership.....	200.00
Four years' membership.....	300.00
Five years' membership or more..	400.00

SEMI-BENEFICIAL MEMBERS' DONATIONS

A **Section 52.** Candidates who are less than sixty (60) years of age when admitted to membership in a semi-beneficial Local shall be entitled to the donations provided for semi-beneficial members on condition that they have been members the required length of time, that they were in good health at the time of their initiation and in good standing at the time of death, provided, however, they are over two years contributing or financial members in good standing, and when owing a sum equal to three months' dues they shall be debarred from all donations until three months after all arrearages are paid in full, which payment must include the payment of dues for the month in which the payment is made. They shall not be entitled to wife or disability donations.

Semi-beneficial members' donations shall be:

B

Two years' membership.....	$ 25.00
Three years' membership.....	50.00
Five years' membership or more	75.00

PRESENTATION AND PAYMENT OF CLAIMS

A Section 53. When death or disability occurs, the person applying for donation shall present to the Local Union concerned a certificate of the facts from the attending physician, and, if approved by the Local Union, the same shall be forwarded by the Financial Secretary to the General Treasurer, with the claim certificate of the United Brotherhood, properly filled out, and shall send all other papers required.

B All death claims must be filed with the General Treasurer within six months from date of death, failure to do so shall invalidate the claim. If a claim is disapproved by the General Treasurer, the party or parties shall have the right to appeal to the General Executive Board any time within six months from the date of disapproval and, if still dissatisfied, shall have the right to appeal any time within two years from date of decision by the G. E. B. to the next General Convention.

C Upon receipt of a claim, the General Treasurer shall investigate the same and, if he approves the claim, he shall at once forward to the Financial Secretary a bank check or draft for the amount of the donation due and payable to the person entitled to receive it.

D Any officer, member or Local Union making use of improper means to obtain donations, or who shall make false statements as to age or health, or knowingly present or sign any claim of a fraudulent character for donations, upon proof thereof, may be fined, suspended or expelled from the United Brotherhood.

HOME AND PENSION

A Section 54. A member shall not be less than 65 years of age to be eligible to the Home or Pension.

B A member shall hold continuous membership for not less than thirty years.

C A member to be admitted to the Home or to be entitled to the Pension must show that he is unable to provide for himself a livelihood.

D The traveling expenses of a member whose application for admittance to the Home has been approved by the proper authorities shall be paid by the Local Union in which he holds membership.

E Members not wishing to avail themselves of the privilege of entering the Home may apply for a Pension not to exceed $15.00 per month.

MISDEMEANORS AND PENALTIES

A Section 55. Any officer or member who becomes an habitual drunkard, or is guilty of improper conduct, or wrongs a fellow-member, or defrauds him, or commits an offense discreditable to the United Brotherhood, shall be fined, suspended or expelled.

B Any officer or member who endeavors to create dissension among the members or works against the interest and harmony of the United Brotherhood, or who advocates or encourages division of the funds or dissolution of any Local Union, or the separation of a Local Union from the United Brotherhood, or embezzles the funds, shall be expelled and forever debarred from membership in the United Brotherhood.

C Any officer or member who wilfully slanders an officer or member of the United Brotherhood, or violates the Trade Rules of the locality in which he is working, or fraudulently receives or attempts to misapply moneys of any Local Union, or of any member or candidate intrusted to him for payment, shall be fined, suspended or expelled, as the Local Union may decide.

D Any officer or member who furnishes a list of membership of his Local Union to any person outside of the United

Brotherhood, without first getting consent of their Local Union, shall be fined not less than Ten Dollars ($10.00) or expelled, as the Local Union may decide.

E Any officer or committeeman who neglects or fails to perform any duty required of him by the Constitution and Laws of the United Brotherhood shall be fined.

F Any member entering the meeting in a state of intoxication, or who disturbs the harmony thereof, or uses profane or unbecoming language during the meeting shall be admonished by the Chair, and, if he again offends, shall be fined Fifty (50c) Cents; for the second offense, One Dollar ($1.00) and excluded from the room; for the third offense he shall be suspended for three months. A visiting brother shall be subject to these Laws, and fines shall be payable to the Local Union where offense is committed. The president shall strictly enforce this Section.

G The President shall impose all fines as laid down by the Constitution and Laws of the United Brotherhood.

H All fines imposed and assessments legally levied shall be charged by the Financial Secretary to the member from whom due, and shall stand against him as regular dues and must be paid within thirty days to entitle him to any privilege, rights or donations of this United Brotherhood. Members working during a strike must pay a strike assessment if levied.

I All fines imposed by any Local Union or District Council on a member of an outside District shall be charged and collected from him by his Local Union and forwarded to the District Council or Local Union where violation of rules occurred, under penalty of suspension.

J A Local Union may fine any member who refuses to parade on Labor Day.

K A fine can be remitted or reconsidered only by a two-thirds vote of the members present at the same or next meeting.

L Any member who acts in violation of his obligation, or violates any section of the Constitution and Laws of the United Brotherhood, shall be fined, suspended or expelled, at the discretion of the Local Union, except where the punishment is specified in the Laws.

CHARGES AND TRIALS

A Section 56. A member must be charged and tried within the jurisdiction of the Local Union or District Council where the offense was committed, where a District Council exists all charges shall be tried before that body. A

copy of the verdict must be sent to the Local Union of which he is a member. Any Local Union may suspend a member by a three-fourths vote until charges can be preferred against him and he is regularly tried. A member must exhaust his resources allowed by the Constitution and Laws of the United Brotherhood before taking his case to the civil courts.

B All charges must be made in writing, and must specify the offense or offenses, and the Section of the Constitution and Laws of the United Brotherhood so violated, and be signed by the member or members making such charges.

C The charges must be read at the meeting and lay over until the next meeting, and the member must be notified by registered mail by the Recording Secretary to be present, and at the same time shall be furnished by the Recording Secretary with a copy of the charges specified. The notice shall be sent to the member's last known address.

D He may attend the meetings until convicted of the charges; but if an officer, he may be retired from office by his Local Union or District Council while the case is pending.

E The Local shall nominate the names of eleven members who it thinks most competent of giving a fair and impartial hearing of the case. The Recording Secretary shall place the names in the ballot box, and the Vice-President shall draw the same from the box and call the names aloud until he has drawn five; when the case will be given to them for investigation.

F All charges shall be referred to a Trial Committee, consisting of five, the accused and the accuser having the alternative of each challenging any three members of said committee. Any member so challenged shall not serve on the committee.

G The accused shall have a fair and impartial trial, and shall be allowed until the next regular meeting to appear and reply, either in person or by counsel; the latter must be a member of the United Brotherhood; and, failing to do so, the committee shall proceed with the investigation. All testimony to be taken down in writing. Testimony of persons not members is admissible. The member or members making the charges may be represented by counsel who shall be a member of the United Brotherhood.

H The chairman of the committee shall, without delay, summons the accused in writing, together with the witnesses for and against him, and try the case.

I When the committee has come to a decision in the case the chairman of said committee shall, at the next regular meeting thereafter, submit a full report of the case with their verdict and the evidence in writing to the Local Union.

J There shall be no debate or review of the case by the Local Union or District Council, except that the defendants and prosecuting witness shall be allowed to plead for, or state their side, and it shall then require a two-thirds vote of the members present to affix such legal penalty as they deem proper. When found guilty of an offense for which a penalty is fixed by the Constitution and Laws of the United Brotherhood it shall be the duty of the presiding officer to impose such penalty. The report of the Trial Committee shall be filed by the Recording Secretary for future reference.

K If the accused wilfully neglects or refuses to stand trial, the committee shall deem him guilty of contempt, and he shall be punished as the Local Union or District Council may determine.

L Any officer or member who is a party to, or directly interested in any case or trial in a Local Union or District Council, shall not be permitted to act as a member of the committee.

M Any member who by preaching, advocating or counseling disorder, dissension and disobedience of authority at a Local Union or District Council meeting, after proper charges have been filed against him and proper notice given within the laws specified by the constitution and laws of the United Brotherhood of Carpenters and Joiners of America, if found guilty of such charges, shall be guilty of acting in violation of his oath of obligation and the penalty prescribed therein would become effective at once.

APPEALS AND GRIEVANCES

A Section 57. A member who has a grievance or who has had an injustice done him in any way, or any Local Union, District, State or Provincial Council having any grievance, may appeal to the General President for redress, subject to a further appeal to the General Executive Board and a final appeal to the General Convention, except violations of Trade Rules; but in no case shall an appeal act as a stay of proceedings, except as provided in the Constitution and Laws of the United Brotherhood.

B In case a fine is imposed by the Local Union or District Council, and an appeal is taken, said fine shall be held by the body assessing same until said appeal is finally and completely decided.

C No appeal can be entertained by the General President where any sum of money in excess of Fifty Dollars ($50.00) is involved unless the appellant has first paid to the Local Union or District Council Fifty Dollars ($50.00) on account, to be held until the appeal is decided by the General President, and if said appeal is decided against the appellant, he shall pay the full amount imposed before taking a further appeal. In all cases where the fine is Fifty Dollars ($50.00) or less the member fined shall pay the full amount to the Local Union or District Council imposing same.

D Any member or subordinate body of the United Brotherhood desiring to take an appeal shall have such appeal made in duplicate. One copy shall be forwarded to the General President and the other copy served on the member or subordinate body against whom the complaint is made within thirty days after the date of the action or grievance complained of. If an appeal is taken from the decision rendered, a notification of said appeal must be sent to the General President within thirty days after the date of the decision made.

E When an appeal is taken from the action of a subordinate body there shall be sent to the General President as well as to the appellant in the case, within thirty days, a full and complete copy of the minutes and charges as presented at the trial, together with the answer to the appeal. However, in cases where the act complained of would be in force and effect before the time designated in which to file answer has elapsed the General President is empowered to cause suspension of penalty becoming effective against appellant until answer has been filed and decision rendered.

F Failing to comply with the above, the General President shall have power to decide the case of appeal on the papers before him. The appellee failing to comply with the above forfeits all further rights to appeal from action of the General President.

G All parties to an appeal to the General President are required to go before a Notary Public and make affidavit to the truth of their written or printed statements.

FUNDS OF LOCAL UNIONS

General Funds

A Section 58. The General Funds or property of a Local Union shall be used only for such purposes as are specified in the Constitution and Laws of the United Brotherhood

and as may be required to transact and properly conduct its business, viz.: Payment of salaries and donations to sick members; purchasing stationery, books, cards, printing, payment of rent, or any legally authorized bill against the Local Union. But under no circumstances shall any of the General Funds be used for loans or donations to members, Contingent Fund or for political or religious purposes. Violation of this Section subjects the offending Local Union to the penalty of suspension.

B No donation for any purpose, except sick donations, shall be given, no tax nor special assessment shall be levied by any Local Union, except by a two-thirds vote of all members present, and cannot be declared valid upon the night of its introduction, but must lay over at least two weeks for consideration (except in case of appeals for aid from sister Local Unions on strike with sanction of the General Executive Board). The Local Union, in the meantime, must notify all members by mail that said donation, tax or assessment is pending.

C The funds or property of a Local Union cannot be divided in any manner among the members individually, but shall remain the property of the Local Union for its legitimate purpose while ten members remain therein.

D All moneys paid out of the funds of a Local Union, with the exception of per capita tax and cost of bonds of financial officers, must be by majority vote of the members, for which an order must be drawn on the Treasurer, signed by the President and Recording Secretary, and stamped with the seal of the Local Union. No appropriation of money can be voted after 10:30 p. m.

E Any Local Union charging more than One ($1.00) Dollar per month dues may create a special Relief and Contingent Fund for use aside from the General Fund. Local Unions may use all dues in excess of the above dues, all fines levied for non-attendance at special or regular meetings, proceeds of entertainments, and may levy an assessment for said fund in accordance with provisions governing special assessments.

F This fund may be used for the relief of aged members, organization, or any other purpose the Local Union may decide, except to support a dual organization, for partisan politics, religious purposes, or for any purpose that may be inimical to the interests of the United Brotherhood; provided, however, if property is purchased with said fund the property shall be held in the name of the United Broth-

erhood of Carpenters and Joiners of America, as specified in the Constitution and Laws of the United Brotherhood.

GENERAL STRIKES AND LOCK-OUTS

A Section 59. Strikes inaugurated and conducted according to the following rules may be sanctioned by the General Executive Board and financial aid extended to the extent that the funds of the United Brotherhood will permit, at the rate of not to exceed One Dollar and Fifty Cents ($1.50) per day. All trade movements to be first submitted to the General Secretary.

B Job or shop strikes are to be conducted on rules made by the District Council or the Local Union where a District Council does not exist. A trade demand inaugurated by a Local Union affiliated with a District Council must be endorsed by the District Council and submitted to the General Executive Board for their sanction.

C Where a District Council exists it shall adopt rules for the government of strikes and lock-outs in that district, as provided for in the Constitution and Laws of the United Brotherhood. When a member from an outside district goes into any city to take advantage of better conditions he shall take the risk of being called out on strike without pay.

D A member going to work, without depositing his Clearance Card, in a locality where a strike or lockout is pending, shall be subject to a fine of not less than Twenty-five ($25.00) Dollars or expulsion. When penalty is imposed the Local Union in which the brother holds membership shall be notified, and if fine has been levied same shall be collected and forwarded to the Local Union or District Council having jurisdiction where the offense was committed. If expulsion, the name of the brother shall be removed from the membership roll of the Local Union

E When any local trade difficulty arises the members aggrieved shall lay the case before their Local Union or District Council. If said body decides to sustain them, the President of the Local Union or District Council shall appoint a Conference Committee of not less than three capable members to wait on the employer or employers, with a view to adjust the difficulty or dispute.

F The Conference Committee shall report at the next meeting, and if no settlement has been effected, the Local Union or District Council shall then proceed as prescribed in the Constitution and Laws of the United Brotherhood.

G When any demand for an increase of wages, reduction of hours or enforcement of Trade Rules is contemplated by a Local Union or District Council each member belonging to the Local Union twelve months or more must be notified by mail to attend a special meeting of his Local Union. Said notice must state the object of the meeting. And any member failing to be present and vote when so notified, unless prevented by sickness or unavoidable accident, shall be fined not less than One ($1.00) Dollar, or more than Five ($5.00) Dollars. When a Local Union or District Council decides to take a vote on a trade demand they shall at once apply to the General Secretary for a blank Schedule of Inquiries.

H If 55 per cent of the members vote by a secret ballot to put the proposed demand into effect, the blank Schedule of Inquiries shall be filled out immediately after the vote is compiled and forwarded to the General Secretary, who shall at once submit a copy of the same to the General Executive Board. In no case shall the General Executive Board sanction a trade movement unless 55 per cent of the members affiliated with the Local Union or District Council vote in favor of the demand.

I The Schedule of Inquiries must be filed with the General Secretary for submission to the General Executive Board at least sixty days prior to the date the trade demand is to go into effect.

J The officers of the District Council or Local Union, or a committee elected or appointed from said bodies, shall endeavor to meet with the employers and bring about an adjustment at the earliest possible date, and shall report to the Local Union or District Council not later than the next regular meeting, and each week to the General Secretary, the result of their efforts.

K The General President, if he deems it necessary, may deputize some suitable member to proceed at once to the scene of the difficulty and endeavor to adjust the trouble by negotiation or arbitration. Failing in settlement, the deputy shall submit by telegraph or letter all facts to the General President, who if he deems it necessary, shall submit all the facts to a vote of the General Executive Board, who shall send their reply to the General Secretary by telegraph within three days after receipt of said information, under penalty of Ten Dollars ($10.00) fine.

L When financial aid has been granted by the General Executive Board to members on strike, the list of members on strike or locked out, must be submitted to the General

Office before financial aid will be allowed by the General Executive Board. The list to be checked up with the membership records at the General Office, and it shall not be payable until the end of the second week, and then only for the second week, to such members as have been on strike or locked out for two full weeks in succession. Members in arrears shall square up their arrearages out of the first strike payment. Only those members who are called out on strike or who are locked out shall be entitled to strike pay.

M The Treasurer of the District Council, or Local Union where no District Council exists, shall send promptly to the General Secretary at the close of each week a complete financial report, on blanks furnished by the General Secretary, of all moneys paid from the funds donated by the General Executive Board. Each member receiving strike pay must sign his name on the blank opposite the amount he receives, and the blanks, when so signed, must be countersigned by the Chairman and Treasurer of the Strike Committee and attested to by the Recording Secretary of the Local Union or District Council and have the seal affixed. During the continuance of the strike the Secretary of the Local Union or District Council, or the Secretary of the Strike Committee, shall report at the close of each week to the General Secretary in detail all matters of interest pertaining to the strike. The General Executive Board shall not vote any additional appropriation until the provisions of this Section are complied with.

N In case of a strike or lock-out, where immediate aid is required, the General President, General Secretary and General Treasurer shall be vested with power to appropriate such sums as, in their judgment, they deem advisable to meet these particular demands, and until such time as the General Secretary can act upon the same through correspondence with the General Executive Board.

O The General Executive Board shall have power, when satisfied from facts and information in their possession that support in a strike or lock-out should cease, to declare the same at an end so far as the financial aid of the United Brotherhood is concerned.

P In case of a general lock-out of members of the United Brotherhood in any locality, the Secretary of the District Council, or the Local Union where a District Council does not exist, shall immediately mail to the General Secretary a complete statement of the causes leading up to the lock-out. The General Secretary will submit the same to the

General Executive Board, who may appropriate funds for support of the members involved. The rules governing the disbursement of funds appropriated for strikes shall govern all appropriations made by the General Executive Board for support of members locked out.

Q The General Executive Board shall not extend financial aid to any Local Union engaged in a strike unless said Local Union has been organized for a period of one year, except it be affiliated with a District Council that is on strike.

R Any Local Union or District Council engaging in a general strike without conforming with the above Laws may be suspended.

S After a trade demand has been approved by the General Executive Board, two thirds of the members affected must vote in favor of calling a strike before a strike can be called.

LABEL

A Section 60. The attached design of label shall be the official label of this United Brotherhood:

B

C The General Office shall, as soon as possible, through the good offices of some District Council or Local Union in each State or Province, have the label registered. Registry to be in the name of the United Brotherhood of Carpenters and Joiners of America, and the expense to be borne by the General Office. After such registry, each District Council, or Local Union where no District Council exists, shall apply to the First General Vice-President for sanction to use the label and give such information pertaining to conditions in that district as he shall require, and after receiving sanction from the First General Vice-President, shall issue labels of the above design, with name or number of the District Council or Local Union issuing same, printed in its proper place on the label, to such shops and mills in that district as are entitled to same, and all labels must be secured from the General Office, which shall furnish them at cost under the following conditions:

D No agreement shall be made or renewed with any firm granting the use of the label after April 1, 1916, unless all shops and mills of the firm have an eight-hour workday and employs only members of the United Brotherhood, except where dispensation has been granted by the General President upon application from the District Council or Local Union.

E Each shop, mill or factory shall have a Shop Steward; he shall have supervision over the label, stamp or die; it shall be his duty to see that said label, stamp or die shall not be placed on any manufactured article other than that which is made under the agreement. Said label must be applied to the article in the shop or mill where manufactured and must at no time be removed for use from shop or mill. It shall be his duty to see that the agreement with the District Council or Local Union with which he is affiliated is carried out in its entirety. The members employed in said shop, mill or factory shall hold meetings at least once a month. Shop Steward must be selected by Local Union or District Council and serve for ensuing month.

F The Shop Steward shall be appointed at the regular monthly meeting for one month; the member working in said shop, mill or factory longest shall serve first.

G Under no circumstances shall an employer be permitted to handle labels or have them in charge, nor shall anyone but a member of the United Brotherhood be permitted to attach them, and the Shop Steward shall at all times keep them securely locked up, so that no one else may have access. All labels shall be attached to finished product by members of the United Brotherhood in such a manner that they cannot be removed therefrom without destroying label.

H Each label shall have the factory, shop or mill number stamped thereon. Whenever a label is applied without the factory number thereon it shall be regarded as forged. The factory number, in conjunction with the name of the District Council or Local Union issuing said label, will thus permit recognition of the product of any particular factory in any part of the jurisdiction of the United Brotherhood.

I It shall be the duty of the Secretary of each District Council or Local Union issuing labels to keep a correct and accurate account of all labels received from the General Office, their numbers and the shops to which they have been issued, and to furnish all information regarding the use of the label which may be called for by the District Council or the First General Vice-President.

J The Shop Steward shall receive and account for the use of the labels and make a report to the District Council or Local Union monthly, or oftener if required, and to the First General Vice-President upon request. Shop Stewards failing to report as required by the District Council or Local Union shall be fined.

K Upon request of the First General Vice-President, an organizer shall be sent to investigate the conditions of any mills using the label, and upon receipt of report the General President shall furnish a copy of same to the First General Vice-President.

L In case of any violation of agreement or grievance against an employer, the label shall be withdrawn when ordered by the First General Vice-President.

M The First General Vice-President, with the sanction of the General Executive Board, shall have the power to order the withdrawal of the label from any factory, shop or mill, upon charges duly made, and shall have power to regulate and investigate the issuance of the label in accordance with the Constitution and Laws of the United Brotherhood.

N It shall be the duty of all District Councils, Local Unions and each member to promote the use of trim and shop-made carpenter work, hotel, bank, bar, store and office fixtures, and of church, school, household furniture, etc., and to make it generally known to the members of the Local Union that it is necessary to all mill and shop members and the United Brotherhood that products made in factories, shops or mills where only members of the United Brotherhood are employed should be installed by fellow-members.

O Where owner or architect specifies that union materials shall be used on any job or building, none other shall be handled by the membership of our Brotherhood, under penalty of suspension from the United Brotherhood.

P For misuse of the Union Label the Shop Steward shall be fined Twenty-five Dollars ($25.00) for the first offense. For the second offense he shall be expelled.

SUPPLIES FOR LOCAL UNIONS

Section 61. All Constitutions, cards and supplies shall be furnished by the General Secretary, per order of the Financial Secretary of any Local Union in good standing, and the money for the same shall be sent to the General Secretary and shall accompany all orders for supplies.

AFFILIATIONS

A Section 62. Being affiliated, as an International Body, with the American Federation of Labor, it is the duty of all Local Unions to affiliate with Central Bodies and State Federations of the American Federation of Labor.

B By vote of the members of the Local Unions in Canada, under date of February 27, 1907, it was decided that all Local Unions in Canada affiliate with the Canadian Trades and Labor Congress, tax to be paid to the Congress direct from the General Office.

GENERAL VOTE

A Section 63. Whenever a general vote of the members is taken, a statement shall be submitted along with it by the parties sending it out, giving their reasons why such amendment should become a law, and the General Secretary shall state the number and location of the Locals that have endorsed same. It shall require a two-thirds vote of the members voting to decide, and said general vote, under Seal of the Local Union, shall be returnable to the General Secretary within six weeks from date of circular calling for the vote, and the result, pro and con, in each Local Union, shall be published in pamphlet form, containing a copy of amendment or amendments voted on and distributed to all Local Unions in the same manner as the monthly Financial Statement. Any Local Union may submit an amendment to the Constitution and Laws of the United Brotherhood. The proposed amendment must be sent to the General Secretary, who shall publish it in "The Carpenter" one month prior to the next regular meeting of the General Executive Board, and if approved by that body, it shall be submitted to a general vote. If the amendment is endorsed at a called meeting for that purpose, by twenty-five (25) Local Unions in as many States, approval of the General Executive Board shall not be required.

B At any time the General Executive Board deems a new law or amendment is necessary to govern the United Brotherhood, they may recommend a clause to the Local Unions to be voted on; and should a two-thirds vote of the members voting support the recommendation, it shall become a law. No new laws or amendments shall be submitted for a vote of the Local Unions between Conventions in which the result of such vote would not become a law six months prior to the holding of the General Convention.

C The Constitution and Laws herein contained can be amended or altered at regular sessions of the Convention

by a majority vote of the delegates present, and all such amendments or alterations must be submitted by the General Secretary, within twenty-five days after the Convention adjourns, to the Local Unions for a general vote. A two-thirds vote of the members voting shall be necessary to sustain such amendments or alterations to make them law.

D All amendments to the General Constitution submitted by Local Unions, District, State or Provincial Councils for the consideration of the Convention shall be forwarded to the General Secretary not later than the 15th day of July preceding the holding of the Convention, and the said amendments shall be published in our Official Journal in the issue immediately following their receipt by the General Secretary, and no further amendments shall be considered by the Constitution Committee other than those submitted in accordance with the above, but amendments to any Section can be offered from the floor during the report of the Constitution Committee.

PROPERTY

Section 64. All officers, at the expiration of their term of office, or when removed, or when their offices are declared vacant, shall deliver to their successors all books, papers, moneys and other property in their possession belonging to the United Brotherhood, and they shall not be relieved from their bonds or obligations until this Law is complied with.

Section 65. All Laws or parts of Laws previously enacted by the United Brotherhood, and standing decisions of the General Executive Board in conflict with the Constitution as amended by the Twenty-Fourth General Convention of the United Brotherhood, are hereby repealed, and the General Executive Board is hereby authorized and empowered to make any needed changes as required by the referendum vote of the membership, and the Constitution as amended and passed by the referendum vote, shall go into effect April 1, 1941.

STANDING DECISIONS OF THE GENERAL EXECUTIVE BOARD

1887

February 15.—A Union not holding meetings at least once a month forfeits its charter and is not eligible to donations.

June 22.—In movements for wages and hours where members are working at wood work, outside of house carpenter work, they can be exempt from Trade Rules.

September 17.—Grading wages is demoralizing to Union principles and to the welfare of the trade, and no Local Union should adopt the system of grading wages.

1888

March 10.—A Local Union can fix a fine as penalty for non-attendance of members at a monthly meeting.

1891

July 16.—All donations are forfeited by a suspended Union the same as a suspended member. A suspended Union cannot be entitled to any donations other than those prescribed for a new Union.

1897

April 7.—Working Cards can only be issued through the Local Unions or District Councils of the United Brotherhood and without discriminating charge in any locality against outside members.

April 9.—Every part of the Ritual is just as binding on members as is the Constitution and Laws of the United Brotherhood.

1898

April 5.—Members violating Trade Rules and called out on strike are not entitled to strike donation.

PARLIAMENTARY RULES

Rule 1. On motion, the regular order of business (see inside front cover) may be suspended by a two-thirds vote of the meeting at any time, to dispose of any urgent business.

Rule 2. All resolutions and resignations must be submitted in writing.

Rule 3. Any conversation by whispering or otherwise, which is calculated to disturb a member while speaking, or hinder the transaction of business, shall be deemed a violation of order.

Rule 4. Partisan politics or sectarian discussion shall not be permitted in the meetings under any circumstances.

Rule 5. All questions of a parliamentary nature not provided for in these Rules shall be decided by Roberts' Manual.

MOTIONS

Rule 6. A motion to be entertained by the presiding officer must be seconded, and the mover as well as the seconder must rise and be recognized by the Chair.

Rule 7. Any member having made a motion can withdraw it by consent of the seconder, but a motion once debated cannot be withdrawn except by a two-thirds vote.

Rule 8. A motion to amend an amendment shall be in order, but no motion to amend an amendment to an amendment shall be permitted.

Rule 9. Any member may call for a division of a question when the sense will admit thereof.

DEBATE

Rule 10. A motion shall not be subject to debate until it has been stated by the Chair.

Rule 11. When a member wishes the floor he shall rise and respectfully address the Chair, and if recognized by the Chair, he shall be entitled to the floor.

Rule 12. If two or more members shall rise to speak at the same time, the Chair shall decide which is entitled to the floor.

Rule 13. Each member, when speaking, shall confine himself to the question under debate and avoid all personal, indecorous or sarcastic language.

Rule 14. No member shall interrupt another while speaking, except to a point of order, and he shall definitely state the point, and the Chair shall decide the same without debate.

Rule 15. If a member while speaking be called to order, he shall take his seat until the point of order is decided, when, if decided in order, he may proceed.

Rule 16. If any member shall feel himself personally aggrieved by a decision of the Chair, he may appeal to the Local Union from the decision.

Rule 17. When an appeal is made from the decision of the Chair, the Vice-President shall then act as Chairman, and he shall state the appeal to the meeting in these words: "Shall the decision of the Chair be sustained as the decision of the Union-" The member will then have the right to state the grounds of his appeal, and the Chair will give the reason for his decision, thereupon the Union will proceed to vote on the appeal, without further debate, and it shall require a majority vote to sustain such appeal.

Rule 18. No member shall speak more than once on the same subject until all the members desiring the floor shall have spoken, nor more than twice, without unanimious consent, nor more than five minutes at any one time.

Rule 19. The presiding officer shall not speak on any subject unless he retires from the Chair, except on points of order and appeals from the decision of the Chair, and in case of a tie he shall have the casting vote.

PRIVILEGED QUESTIONS

Rule 20. When a question is before the meeting, no motion shall be in order except: (1) to adjourn; (2) to lay on the table; (3) for the previous question; (4) to postpone to a given time; (5) to refer or re-commit; (6) to amend. And these motions shall have precedence in the order herein arranged. The first three of these motions are not debatable.

Rule 21. When the previous question is moved and seconded, it shall be put in this form: "Shall the main question be now put?" If this is carried, all further motions, amendments and debate shall be excluded and the main question put without delay.

Rule 22. If a question has been amended, the question on the amendment shall be put first. If more than one amendment has been offered, the question shall then be put as follows: (1) amendment to the amendment; (2) amendment; (3) original proposition.

Rule 23. When a question is postponed indefinitely it shall not come up except by a two-thirds vote.

Rule 24. A motion to adjourn shall always be in order, except; (1) when a member has the floor; (2) when members are voting; (3) when it has been decided to take the previous question.

TAKING THE VOTE

Rule 25. Before putting a question to vote, the presiding officer shall ask: "Is the Union ready for the question?" Then it shall be open for debate. If no member arises to speak, the presiding officer shall then put the question in this form: "All in favor of the motion say Aye," and after the affirmative vote is expressed, "Those of the contrary opinion say No." After the vote is taken he shall immediately announce the result.

Rule 26. When the presiding officer has commenced taking a vote, no further debate or remarks shall be allowed unless a mistake has been made, in which case the mistake shall be rectified and the presiding officer shall again take the vote.

Rule 27. Before the presiding officer declares the vote on a question, any member may ask for a division of the house; then the Chair is in duty bound to comply with the request, and a standing vote shall then be taken, and the Conductor shall count the same.

Rule 28. Every member present shall vote on all questions before the Union, unless personally interested or excused by the Union.

Rule 29. When a blank is to be filled, the question shall be taken first upon the largest sum or number, or the longest or latest time.

Rule 30. When a question has been decided it can be reconsidered only at the same meeting or on the next regular meeting night.

Rule 31. A motion to reconsider must be made and seconded by two members who voted with the prevailing side.

Rule 32. All questions, unless otherwise provided, shall be decided by a majority of all votes cast.

INDEX

	Sec.	Page
Admission of Local Unions	29	25
Admission of Members	43	35
	62	59
Affiliations	63	59
Amendments to Constitution	57	50
Appeals and Grievances	25	22
Appeals or Circulars for Financial Aid	42	33
Apprentices	44	38
Arrears, Local Unions	45	39
Arrears, Members in	15	15
Assessments, Payment of General	58	51
Assessments, Payment of Local	35	28
Attendance of Quarterly Meetings	28	25
Auxiliary Unions	25	22
Benefits, Local	15	16
Bonds of Financial Officers	43	36
Candidates Rejected	23	22
Carelessness of Officers, Local	56	48
Charges and Trials	10	9
Charters to Auxiliary Unions	46	39
Clearance Cards	10	10
Consolidating of Local Unions	58	52
Contingent Fund	43	37
Contracting Members	51	44
Disability Donations	26	23
District Council By-Laws	8	6
Division of Laws	49	43
Donations, Members Funeral	48	42
Donations, Members Entitled to	52	46
Donations, Semi-Beneficial	50	44
Donations, Wife's Funeral	44	37
Dues, Members'	36	29
Dues, Receiving of	33-41	28-32
Duties of Local Officers	9	6
Election, General	31	27
Elections, Local	55	47
Embezzlement of Funds	30	26
Expelled Local Unions	42	33
Expelled or Rejected Members		

	Sec.	Page
Finances and Dues	44	37
Fines, Payment of	55	48
Foreign Association, Members of	43	36
General By-Laws	18	19
General Convention	18-24	19-21
General Officers and Elections	9-16	6-18
General Strikes and Lockouts	59	53
General Vote	63	59
Headquarters, General Office and Home	4	4
Home	5	4
Home and Pension	54	47
Honorary Members	43	36
Installation of Local Officers	31	27
Jurisdiction	6	4
Jurisdiction of Auxiliary Unions and District Councils	28	25
Jurisdiction of District Councils	26	23
Jurisdiction of Local Unions	25	22
Jurisdiction of State and Provincial Councils	27	24
Label	60	56
Labor Day Parade, Fine	55	48
Ladies' Auxiliary Unions	10	9
Letters or Circulars of Scurrilous Nature	9	9
Local Unions, Funds of	58	51
Local Unions, Lapsed, Suspended or Expelled	30	26
Local Unions, Withdrawal of	25	22
Local Officers	31	26
Lump Work	42	34
Members, Beneficial	42	32
Members, Contracting	43	37
Members Engaged in Selling Liquor	47	42
Members, Expulsion of	43	37
Members of lapsed or Suspended Local Unions	30	26
Members, Resigning	47	41
Members, Suspended	45	39
Members, Transferring	46	39
Misdemeanors and Penalties	55	47
Negligence of Local Officers	25	22
Order of Procedure at Convention	19	21
Per Capita Tax, Payment of	37	30
Piece Work	42	34
Presentation and Payment of Claims	53	46
Property	64	60
Provincial Councils	27	24
Qualifications for Membership	42	32
Remitting Fines	55	48
Revenue	17	18
Settlements by General President, Must Be Accepted	10	11
Sick Donations	25	22
Standing Decisions of G. E. B.		60
State Councils, Jurisdiction of	27	24
Strikes and Lockouts	59	53
Sub-contracting	42	34
Supplies for Local Unions	61	58
Suspended and Lapsed Local Unions	30	26
Tabulation Committee	9	8
Terms of Local Unions' Officers	31	26
Trade Autonomy	7	5
Vacancies in Local Offices	32	27
Withdrawal Cards	47	41

EXHIBIT "1"

98

CONSTITUTION
OF THE
AMERICAN FEDERATION OF LABOR

AS ADOPTED AT THE SIXTY-THIRD ANNUAL CONVENTION HELD AT BOSTON, MASSACHUSETTS, OCT. 4 TO 14, INC., 1943

PRICE LIST OF SUPPLIES

CHARTER (CERTIFICATE OF AFFILIATION), with two English, Italian, or Spanish Manuals of Common Procedure, giving directions for opening and closing meetings, installation of officers, initiation of members, etc..... $ 5.00

CHARTER OUTFIT..... 10.00

A Charter outfit consists of one set of books—Ledger, Day Book, Minute Book, Roll Call Book, Treasurer's Account Book, Treasurer's Receipt Book, Secretary's Order Book, one Seal, seven Constitutions American Federation of Labor, one quire of Official Note Paper, and one copy of Brief History of American Federation of Labor.

Seal	$ 5.00
100-page Day Book, each.....	1.00
200-page Day Book, each.....	1.50
Treasurr's Account Book, each.....	.60
Secretary's Order Book, each.....	.60
Treasurer's Receipt Book, each.....	.60
Minute Book, each.....	.60
200-page Minute Book, each.....	1.50
300-page Minute Book, each.....	2.00
Roll-Call Book, each.....	.72
100-page Ledger, each.....	1.50
200-page Ledger, each.....	2.70
300-page Ledger, each.....	3.60
400-page Ledger, each.....	4.20
500-page Ledger, each.....	4.80
600-page Ledger, each.....	5.40
700-page Ledger, extra heavy bound, each...	6.40
800-page Ledger, extra heavy bound, each...	8.00
900-page Ledger, extra heavy bound, each...	10.80
1,000-page Ledger, extra heavy bound, each..	12.00
1,500-page Ledger, extra heavy bound, each..	15.00
2,000-page Ledger, extra heavy bound, each..	18.00
Official Letter Paper, with seal, per 100....	.60
Official Note Paper, with Seal, per 100.....	.50
Traveling Cards, per dozen.....	.25
Manual, English, Italian or Spanish, each...	.25
Blank Applications for Membership, per 100	.50
Union Labels, per 1,000, 75 cents; 5,000, $3; 10,000	5.00
Constitution, American Federation of Labor, per 100.....	5.00
Honorable Withdrawal Cards, per dozen.....	.25

100

CONSTITUTION

OF THE

AMERICAN FEDERATION OF LABOR

AS ADOPTED

AT THE

SIXTY-THIRD ANNUAL CONVENTION

HELD AT

BOSTON, MASSACHUSETTS
OCTOBER 4 TO 14, INCLUSIVE, 1943

PREAMBLE

WHEREAS, A struggle is going on in all the nations of the civilized world between the oppressors and the oppressed of all countries, a struggle between the capitalist and the laborer, which grows in intensity from year to year, and will work disastrous results to the toiling millions if they are not combined for mutual protection and benefit;

It, therefore, behooves the representatives of the trade and labor unions of America, in convention assembled, to adopt such measures and disseminate such principles among the mechanics and laborers of our country as will permanently unite them to secure the recognition of rights to which they are justly entitled.

We, therefore, declare ourselves in favor of the formation of a thorough federation, embracing every trade and labor organization in America, organized under the trade union system.

CONSTITUTION

OF THE

American Federation of Labor

Article I—Name

This association shall be known as THE AMERICAN FEDERATION OF LABOR, and shall consist of such Trade and Labor Unions as shall conform to its rules and regulations.

Article II—Objects

SECTION 1. The object of this Federation shall be the encouragement and formation of local Trade and Labor Unions, and the closer federation of such societies through the organization of Central Trade and Labor Unions in every city, and the further combination of such bodies into State, Territorial, or Provincial organizations to secure legislation in the interest of the working masses.

SEC. 2. The establishment of National and International Trade Unions, based upon a strict recognition of the autonomy of each trade, and the promotion and advancement of such bodies.

SEC. 3. The establishment of Depart-

ments composed of National or International Unions affiliated with the American Federation of Labor, of the same industry, and which Departments shall be governed in conformity with the laws of the American Federation of Labor.

SEC. 4. An American Federation of all National and International Trade Unions, to aid and assist each other; to aid and encourage the sale of union label goods, and to secure legislation in the interest of the working people, and influence public opinion, by peaceful and legal methods, in favor of organized labor.

SEC. 5. To aid and encourage the labor press of America.

Article III—Convention

SECTION 1. The convention of the Federation shall meet annually at 10 a. m., on the first Monday in October, at such place as the delegates have selected at the preceding convention, except during the years when a Presidential election occurs, when the convention in those years shall be held beginning the third Monday of November. If the proper convention arrangements or reasonable hotel accommodations can not be secured in that city,

the Executive Council may change the place of meeting.

SEC. 2. (a) Special conventions may be called by direction of a regular convention, by order of the Executive Council, or on request of National and International Unions representing a majority of the total membership of the American Federation of Labor, as evidenced by the records of the Secretary-Treasurer to the last regular convention.

(b) Special convention shall not be called unless at least 30 days' notice of such special convention, together with statement of particular subject or subjects to be considered, has been given to all affiliated organizations.

(c) Representation to special conventions shall be on the same basis and subject to like qualifications and procedure governing regular conventions.

(d) Special conventions shall be clothed with like authority and power conferred upon regular conventions, its decisions shall be equally binding and it shall be governed by the same procedure applicable to regular conventions; however, such special conventions shall be limited solely to the subject or subjects specifically and

definitely indicated in the call for such special convention.

SEC. 3. At the opening of the convention the President shall take the chair and call the convention to order, and preside during its sessions.

SEC. 4. The following committees, consisting of fifteen members each, shall be appointed by the President: First, Rules and Order of Business; second, Report of Executive Council; third, Resolutions; fourth, Laws; fifth, Organization; sixth, Labels; seventh, Adjustment; eighth, Local and Federated Bodies; ninth, Education; tenth, State Organizations; eleventh, Industrial Relations; twelfth, Building Trades (to which shall be referred all grievances and other matters pertaining exclusively to the building trades); thirteenth, Legislation.

SEC. 5. The President shall direct the chief executive officers of three National or International Unions, at least ten days previous to the holding of the annual convention, to appoint one delegate each from their respective delegations-elect, who shall compose an Auditing Committee. The committee shall meet at such place as the President of the American Federa-

tion of Labor may direct, and at such time prior to the convention as the President may determine is necessary for the proper performance of their duty; and they shall audit the accounts of the Federation for the preceding twelve months, and report upon credentials immediately upon the opening of the convention. The expense of said committee shall be paid out of the funds of the Federation.

SEC. 6.[1] All resolutions, petitions, memorials and/or appeals to be considered by any subsequent convention of the American Federation of Labor must be received by the Secretary-Treasurer of the American Federation of Labor at headquarters in Washington, D. C., 30 days immediately preceding the opening of the convention; except in instances where such resolutions, petitions, memorials, appeals, etc., have been acted upon and approved at a regular convention of a National or International Union or State Federation of Labor, held during this 30-day period, in which event such proposals shall be received up to five days prior to the convening date of the convention of the American Federation of Labor.

[2] All resolutions, petitions, memorials

and/or appeals received or submitted after the time hereinbefore stipulated or during the convention shall be referred to the Executive Council and the Executive Council shall refer all such proposal or proposals to the convention with the understanding that acceptance of such proposal or proposals is dependent upon the unanimous consent of the convention.

[3] Any or all proposals emanating from directly affiliated local and federal labor unions shall be referred to the Executive Council for consideration and disposition. The Executive Council shall in turn advise the convention of the American Federation of Labor of the disposition made of such proposal or proposals.

[4] Proposals emanating from state federations of labor to receive consideration of a convention of the American Federation of Labor must first have received the approval of the previous convention of the state federation of labor involved.

In the case of city central labor unions any proposal or proposals to be considered must have first received the approval of such central labor union at a regularly constituted meeting of such organization.

[5] All resolutions, memorials, petitions

and/or appeals received shall, immediately upon the expiration of the time for introduction hereinbefore indicated, be grouped as to nature of contents, character of subjects embraced and committees to which they are to be referred and all such proposals in such allocated form shall be prepared for distribution at the opening session of the convention.

The President shall be authorized in the interest of helpful consideration and expediency to appoint the contemplated chairman and secretary of the Committee on Resolutions and/or of any other committee to be appointed and as the number and character of proposals may indicate, and to require such chairman and secretary to meet either at the headquarters of the American Federation of Labor, or at the convention city previous to the opening of the convention to consider proposals to be referred to such committee or committees and in order to enable them to more speedily and effectually report thereon to the convention itself.

SEC. 7. The convention shall have power to order an executive session at any time.

SEC. 8. None other than members of a bona fide Trade Union shall be permitted

to address the convention or to read papers therein, except by a two-thirds vote of the convention.

SEC. 9. Party politics, whether they be Democratic, Republican, Socialistic, Populistic, Prohibition or any other, shall have no place in the conventions of the American Federation of Labor.

SEC. 10. The rules and order of business governing the preceding convention shall be in force from the opening of any convention of the American Federation of Labor until new rules have been adopted by action of the convention.

SEC. 11. A quorum for the transaction of business shall consist of not less than one-fourth of the delegates attending a convention.

SEC. 12. No grievance shall be considered by any convention that has been decided by a previous convention, except upon the recommendation of the Executive Council, nor shall any grievance be considered where the parties thereto have not previously held a conference and attempted to adjust the same themselves.

Article IV—Representation

SECTION 1. The basis of representation in the convention shall be: From National

and International Unions, less than four thousand members, one delegate; four thousand or more, two delegates; eight thousand or more, three delegates; sixteen thousand or more, four delegates; thirty-two thousand or more, five delegates, and so on. From Central Bodies, State Federations, National Departments, Federal Labor Unions, and Local Unions having no National or International Union, one delegate; provided, however, that Local Unions and Federal Labor Unions herein referred to, located in one city, shall have the right to unite in sending a delegate to represent them unitedly. Only bona fide wage workers who are not members of, or eligible to membership in other trade unions, shall be eligible as delegates from Federal Labor Unions. Only those persons whose Local Unions are affiliated with Central Bodies or with State Branches and who are delegates to said Central Bodies or State Branches shall be eligible to represent City Central Bodies or State Branches in the conventions of the American Federation of Labor.

SEC. 2. The delegates shall be elected at least two weeks previous to the annual convention of the American Federation of

Labor and the names of such delegates shall be forwarded to the Secretary-Treasurer of this body immediately after their election.

SEC. 3. Questions may be decided by division or a show of hands, but if a call of the roll is demanded by one-tenth of the delegates present, each delegate shall cast one vote for every one hundred members or major fraction thereof which he represents, provided that the delegate's union has been affiliated with the Federation for the full fiscal year preceding the convention. When affiliated for a period of less than one year, each delegate shall cast one-twelfth of one vote for each one hundred members or major fraction thereof which he represents for each month for which per capita tax has been paid upon the members of his union. No city or state federation shall be allowed more than one vote.

SEC. 4. The Secretary-Treasurer shall prepare for use of the convention printed poll lists, containing the number of votes the delegates from National and International Unions are entitled to, based upon the average membership during the year, from reports made to the office of the

Federation not later than August 31 preceding the annual convention.

SEC. 5. No organization or person that has seceded, or has been suspended, or expelled by the American Federation of Labor, or by any National or International organization connected with the Federation shall, while under such penalty, be allowed representation or recognition in this Federation, or in any Central Body or National or International Union connected with the American Federation of Labor, under the penalty of the suspension of the body violating this section. No organization officered or controlled by Communists, or any person espousing Communism or advocating the violent overthrow of our institutions shall be allowed representation or recognition in any Central Body or State Federation of Labor.

SEC. 6. No organization shall be entitled to representation unless such organization has applied for and obtained a certificate of affiliation at least one month prior to the convention, and no person shall be recognized as a delegate who is not a member in good standing of the organization he is elected to represent.

Article V—Officers

SECTION 1. The officers of the Federation shall consist of a President, thirteen Vice-Presidents, and a Secretary-Treasurer, to be elected by the convention on the last day of the session, unless otherwise determined by the convention, and these officers shall be the Executive Council.

SEC. 2. The President and Secretary-Treasurer shall be members of the succeeding convention in case they are not delegates, but without vote.

SEC. 3. All elective officers shall be members of a local organization connected with the American Federation of Labor.

SEC. 4. The terms of the officers of the American Federation of Labor shall expire on the thirty-first day of December succeeding the convention.

SEC. 5. The President and Secretary-Treasurer shall engage suitable offices in the same building at Washington, D. C., for the transaction of the business of the organization.

SEC. 6. All books and financial accounts shall at all times be open to the inspection of the President and Executive Council.

Article VI—Duties of President

SECTION 1. It shall be the duty of the President to preside at the regular and special conventions; to exercise supervision of the Federation throughout its jurisdiction; to sign all official documents, and to travel with the consent of the Executive Council, whenever required, in the interest of the Federation.

SEC. 2. The President shall submit to the Secretary-Treasurer, at the end of each month, an itemized account of all moneys, traveling and incidental, expended by him in the interest of the Federation; and shall report to the annual convention of the Federation, through the report of the Executive Council.

SEC. 3. The President, if not a delegate, shall have the casting vote in case of a tie, but shall not vote at other times. He shall be required to devote all his time to the interest of the Federation.

SEC. 4. The President shall call meetings of the Executive Council, when necessary; and shall preside over their deliberations, and shall receive for his services $20,000 per annum, payable weekly.

SEC. 5. In case of a vacancy in the office

of President, by death, resignation, or other cause, the Secretary-Treasurer shall perform the duties of the President until his successor is elected. In that event it shall be the duty of the Secretary-Treasurer to issue, within six days from the date of vacancy, a call for a meeting of the Executive Council at headquarters for the purpose of electing a President to fill said vacancy.

SEC. 6. The President shall be authorized and empowered to discipline State Federations of Labor, City Central Labor Unions, and Local and Federal Labor Unions, including authority to suspend and/or expel any officer or member thereof, and/or to suspend and/or revoke their charter subject first to an appeal to the Executive Council and thereafter to the next regular convention immediately following. The President, with the approval of the Executive Council, shall likewise have authority and be empowered to safeguard and protect and if necessary take immediate charge of all equities and properties, tangible or intangible, acquired and/or possessed by State Federations of Labor, City Central Labor Unions and Local and Federal Labor Unions or their

subsidiaries or agents, whenever or however such equities and/or properties may be jeopardized through disobedience to the constitution, laws, rules and requirements of the American Federation of Labor or for any other reason or cause deemed imperative by the President and the Executive Council, and shall hold same in trust as provided by the laws of the American Federation of Labor.

Disciplinary action by the President shall consist of "emergency action" and "decisions," the latter being subject to the appeal to the Executive Council hereinbefore provided. "Emergency action" shall be taken when in the opinion of the President it is necessary to preserve the rights of the American Federation of Labor, or of any affiliate mentioned in this section, or of any officers or members thereof, and for the purpose of preserving the status quo. Emergency action shall be effective only for 45 days unless within such 45 days written charges are caused to be served on the affiliate involved, or on the officers or members involved if they are individually charged. If such charges are served then the emergency action shall stand until a trial is had before the Presi-

dent or a representative designated by him to hear them. Such trial shall commence within 45 days after the charges have been served. If the trial is before a representative designated by the President he shall report his findings orally or in writing to the President, who shall within 15 days render a decision in the matter. Such decision shall consist of a dismissal of the charges if found untrue or that they, or part of them, are sustained, whereupon the President shall take such disciplinary action as hereinbefore authorized. Such action shall constitute the President's "decision," but shall be subject to change or modification by him before an appeal to the Executive Council is acted upon. An appeal to the Executive Council shall be in writing and mailed to the Secretary-Treasurer of the American Federation of Labor within 15 days after the President has rendered his decision. Pending an appeal, the decision of the President shall remain in full force and effect.

Article VII—Duties of Secretary-Treasurer

SECTION 1. The duties of the Secretary-Treasurer shall be to take charge of all

moneys, property, securities and other evidence of investment, books, papers and effects of the general office; to conduct the correspondence pertaining to his office; to furnish the elective officers with the necessary stationery; to convene and act as Secretary at the regular and special conventions, and to furnish the Committee on Credentials at the convention a statement of the financial standing of each affiliated body; to forward on March 1st and September 1st of each year to the secretaries of all affiliated organizations a list of the names and addresses of all secretaries and organizers.

SEC. 2. The Secretary-Treasurer shall keep all letters, documents, accounts, etc., in such manner as the regular and special conventions may direct; he shall receive and collect all moneys due the Federation which shall be paid out only on the approval of the President.

SEC. 3. The Secretary-Treasurer shall collect the interest on all interest-bearing securities or other deposit at the expiration of each interest period. The Secretary-Treasurer shall deposit in open account in bank or banks in the name of the American Federation of Labor and as

Secretary-Treasurer all amounts in his possession not in certificates of deposit or invested in interest-bearing securities and before any money thus deposited can be withdrawn each check shall be signed by him as Secretary-Treasurer. A copy of this section shall be forwarded by the President of the Federation to each bank upon which the Federation holds certificates of deposit.

SEC. 4. The Secretary-Treasurer shall pay all warrants regularly drawn when signed by the President or his authorized agent as required by this constitution and none others.

SEC. 5. The Secretary-Treasurer shall issue stamps to Local and Federal Labor Unions, which shall be used by such unions with which to receipt for members' dues.

SEC. 6. It shall be the duty of each International, National, Local Trade and Federal Labor Union affiliated with the American Federation of Labor to furnish to the Secretary-Treasurer of the American Federation of Labor a copy of all official reports issued by such affiliated organizations containing a statement of their membership in good standing and to fur-

nish such additional statistical data as may be called for by the Secretary-Treasurer of the American Federation of Labor as may be in the possession of the respective unions.

SEC. 7. The Secretary-Treasurer shall give a bond for the faithful performance of his duties in such amount as may be determined by the Executive Council and shall report to the annual convention of the Federation through the report of the Executive Council, and for his services he shall receive $18,000 per annum, payable weekly.

SEC. 8. The Secretary-Treasurer shall submit to the Auditing Committee for their inspection, vouchers for all moneys expended; close all accounts of the Federation on August 31 of each year and all moneys received or disbursed after such date shall not be reported in the general balance account of the ensuing convention. He shall print the financial statement quarterly as a separate document and forward copy to all affiliated National and International Unions, State federations of labor, city central bodies and directly affiliated Local Unions.

Article VIII—Duties of Finance Committee

SECTION 1. The Executive Council shall appoint three of its members as a Finance Committee, of which the President shall be one. This Finance Committee, with the Secretary-Treasurer, shall be clothed with authority to invest the surplus funds of the Federation in sound securities, or to deposit same in bank or banks in interest-bearing certificates of deposit. Surplus funds of the American Federation of Labor shall be invested in sound securities or shall be deposited by the Secretary-Treasurer in bank or banks in interest-bearing certificates of deposit in the name of the American Federation of Labor as directed by the Finance Committee, and in order to be cashed shall require the signatures of the Secretary-Treasurer or his authorized agent, and the President or his authorized agent.

SEC. 2. All securities and other evidence of investment shall be placed in a safe deposit box in the name of the American Federation of Labor in a bank selected by the Finance Committee and access to said box shall only be had jointly by the Secretary-Treasurer and the President or the

Secretary-Treasurer and at least one member of the Finance Committee designated by the President.

Article IX—Executive Council

SECTION 1. It shall be the duty of the Executive Council to watch legislative measures directly affecting the interests of working people, and to initiate, whenever necessary, such legislative action as the convention may direct.

SEC. 2. The Executive Council shall use every possible means to organize new National or International Trade or Labor Unions, and to organize Local Trade and Federal Labor Unions, and connect them with the Federation until such time as there is a sufficient number to form a National or International Union, when it shall be the duty of the President of the Federation to see that such organization is formed.

SEC. 3. When a National or International Union has been formed, the President shall notify all Local Unions of that trade to affiliate with such National or International Union, and unless said notification be complied with, within three months, their charters shall be revoked.

SEC. 4. The Executive Council shall also prepare and present to the convention, in printed form, a concise statement of the details leading up to approved and pending boycotts (and all matters of interest to the convention), and no indorsement for a boycott shall be considered by the convention except it has been so reported by the Executive Council.

SEC. 5. While we recognize the right of each trade to manage its own affairs, it shall be the duty of the Executive Council to secure the unification of all labor organizations, so far as to assist each other in any trade dispute.

SEC. 6. Whenever the revenue of the Federation shall warrant such action, the Executive Council shall authorize the sending out of Trade Union speakers from place to place in the interests of the Federation.

SEC. 7. The salaries of organizers of the American Federation of Labor shall be determined by the Executive Council in addition to which they shall receive railroad fare and hotel expenses when traveling away from the city in which they reside. The remuneration for services of members of the Executive Council, fraternal delegates, interpreters and speak-

ers, or other persons temporarily employed by the American Federation of Labor shall be determined by the Executive Council.

SEC. 8. The Executive Council shall have power to make the rules to govern matters not in conflict with this Constitution, or the constitution of affiliated unions, and shall report accordingly to the Federation.

SEC. 9. In the event of a vacancy of any member of the Executive Council, other than that of the President, by reason of death, resignation, or other cause, the President shall make such vacancy known to the Executive Council, and shall call for nominations. The names of all nominees shall be submitted to the Executive Council, and it shall require a majority vote of the Executive Council to elect. Upon each unsuccessful balloting the name of the candidate receiving the lowest number of votes shall be dropped.

SEC. 10. All Local Trade Unions and Federal Labor Unions holding charters direct from the American Federation of Labor, desiring the assistance of the American Federation of Labor in trade disputes, shall submit to the President of the American Federation of Labor for approval by the Executive Council the full

statement of the grievance, and shall receive within twenty (20) days from the President an answer as to whether they will be sustained or not, and no benefits shall be paid where a strike takes place before the Local Union has received the approval of the Executive Council.

SEC. 11. No charter shall be granted by the American Federation of Labor to any National, International, Trade, or Federal Labor Union without a positive and clear definition of the trade jurisdiction claimed by the applicant, and the charter shall not be granted if the jurisdiction claimed is a trespass on the jurisdiction of existing affiliated unions, without the written consent of such unions; no affiliated International, National, or Local Union shall be permitted to change its title or name, if any trespass is made thereby on the jurisdiction of an affiliated organization, without having first obtained the consent and approval of a convention of the American Federation of Labor; and it is further provided, that should any of the members of such National, International, Trade or Federal Labor Union work at any other vocation, trade, or profession, they shall join the union of such vocation, trade, or

profession, provided such are organized and affiliated with the American Federation of Labor.

SEC. 12. The Executive Council of the American Federation of Labor shall only have power to revoke the charter of an affiliated National or International Union when the revocation has been ordered by a two-thirds majority of a regular or special convention of the American Federation of Labor, by a roll-call vote.

A National or International Union chartered by and affiliated with the American Federation of Labor can be suspended from membership in the American Federation of Labor only by a majority vote of the duly accredited delegates in attendance at any session of a convention, voting in accordance with the provisions of Section 3 of Article IV of this constitution, except in cases where two (2) or more National or International Unions unite and conspire to launch, create or maintain an organization dual and rival to the American Federation of Labor. In that event, charges may be filed against said organization, or organizations, a hearing shall be held upon said charges by the Executive Council and if found

guilty by it, said organization, or organizations, may be suspended from affiliation with the American Federation of Labor by the Executive Council with the right of appealing to the next succeeding annual convention of the American Federation of Labor. If appeal is taken, the suspended union, or unions, will have the right of appearing before the convention committees and the convention itself, but without the right to vote.

SEC. 13. The Executive Council shall be authorized and empowered to take such actions and render such decisions as may be necessary to carry out fully and adequately all provisions contained in the constitution and general laws as well as declarations and decisions of the conventions, and it shall be authorized and empowered to take such further actions and render such further decisions during the interim of conventions as may become necessary to safeguard and promote the best interest of the Federation and of all its affiliated unions.

Article X—Revenue

SECTION 1. The revenue of the Federation shall be derived from a per capita tax to be paid upon the full paid-up mem-

bership of all affiliated bodies, as follows: From International or National Trade Unions, a per capita tax of one and one-half (1½) cents per member per month up to 300,000 members, and one (1) cent per member per month for members in excess of 300,000; from Local Trade Unions and Federal Labor Unions, thirty-five and one-half (35½) cents per member per month, eight and one-half (8½) cents of which must be set aside to be used only in the case of strike or lockout unless otherwise ordered by the Executive Council; the amount received by the American Federation of Labor on each initiation fee from all directly affiliated local unions shall be 25 per cent of the total initiation fee received by the local union from the individual, but in no case shall the amount received by the American Federation of Labor be less than one dollar; from Central and State Bodies, $10 per year, payable quarterly. Revenue may also be derived from assessments when and as ordered by a majority vote of a regular or special convention.

SEC. 2. Delegates shall not be entitled to a seat in the regular or special conventions unless the tax and assessments of their

organization, as provided for in Section 1, Article X, and assessments as provided in Article XII, sections 1 and 2 have been paid in full to the convention when such arrearages are paid the next convention.

SEC. 3. Any organization affiliated with this Federation not paying its per capita tax on or before the 15th of each month and assessment or assessments when due and payable shall be notified of the fact by the Secretary-Treasurer of the Federation, and if at the end of three months it is still in arrears it shall become suspended from membership by the Federation, and can be reinstated only by a vote of the convention when such arrearages are paid in full, as provided in Section 2 of this Article.

Article XI—Local Central Bodies

SECTION 1. No Central Labor Union, or any other central body of delegates, shall admit to or retain in their councils delegates from any local organization that owes its allegiance to any other body, National or International, hostile to any affiliated organization, or that has been suspended or expelled by, or not connected with a National or International organization of their trade herein affiliated; nor

are delegates to be seated from locals of National or International organizations which are not affiliated to the American Federation of Labor, under penalty of having their charter revoked for violation of their charter by the President or the Executive Council subject to appeal to the next convention.

SEC. 2. It shall be the duty of all National and International Unions affiliated with the American Federation of Labor to instruct their Local Unions to join chartered Central Labor Bodies, Departments, and State Federations in their vicinity where such exist. Similar instructions shall be given by the American Federation of Labor to all Trade and Federal Labor Unions under its jurisdiction.

SEC. 3. Where there are five or more Local Unions in any city belonging to any National or International Union affiliated with this Federation they may organize a Central Labor Union, or shall join such body if already in existence.

SEC. 4. The Executive Council and Local Central Labor Unions shall use all possible means to organize and connect as Local Unions to National or International Unions the organizations in their vicinity;

to aid the formation of National or International Unions where none exist, and to organize Federal Labor Unions where the number of craftsmen precludes any other form of organization.

SEC. 5. No Central Labor Union, or other central body of delegates, shall have the authority or power to order any organization, affiliated with such Central Labor Union, or other central labor body, to strike, or to take a strike vote, where such organization has a national organization, until the proper authorities of such National or International organization have been consulted and agreed to such action. A violation of this law shall be sufficient cause for the President or the Executive Council to revoke the charter.

SEC. 6. Separate charters may be issued to Central Labor Unions, Local Unions, or Federal Labor Unions, composed exclusively of colored members, where, in the judgment of the Executive Council, it appears advisable and to the best interest of the Trade Union Movement to do so.

SEC. 7. No Central Labor Union or other Central Body of delegates shall have power or authority to originate a boycott, nor shall such bodies endorse and order the

placing of the name of any person, firm or corporation on an unfair list that has agreements with any International or National Unions or Local Unions until the National or International Unions or Local Unions having such agreements are informed of the request made upon the Central Body of delegates and such International, National or Local Unions working under agreements that may be affected have had reasonable time to intercede and until the Local Union desiring such action by the Central Body has, before declaring the boycott, submitted the matter in dispute to the Central Body for investigation and the best endeavors on its part to effect an amicable settlement.

Failure to reach an understanding between the Unions involved, the entire matter shall be referred to the Executive Council of the American Federation of Labor which shall be empowered to grant or refuse such request.

SEC. 8. No Central Body or Department affiliated with the American Federation of Labor shall reject credentials presented by a duly elected or appointed delegation of a Local Union chartered by a National or an International Union having affiliation with the American Federation of

Labor; provided, however, that upon written charges, signed by at least three delegates, any delegate of an affiliated Union may, upon conviction after a fair trial, be expelled or suspended. Action of the Central Body under this section shall be subject to appeal to the Executive Council of the American Federation of Labor, and no delegation representing Local Unions affiliated, as herein described, shall be suspended or expelled until like action is taken.

SEC. 9. No Central Body shall take part in the adjustment of wage contracts, wage disputes or working rules of Local Unions, affiliated with a National or International Union, unless the laws of the National or International Union permit, except upon the request or consent of the executive officer of the National or International Union affected.

SEC. 10. Local Unions of National or International Unions affiliated with the Departments attached to the American Federation of Labor, in any city where a Local Department exists, shall not be eligible to membership in any Local Department unless they are connected with the chartered Central Body, nor shall they be eligible to membership in the Central

Body unless they are affiliated with the Local Department.

SEC. 11. The representation of local unions entitled to affiliation in Central Labor Unions shall be as follows: Local Unions having 50 members, or less, 2 delegates; from 51 to 100 members, 3 delegates; 101 to 250 members, 4 delegates; 251 to 500 members, 5 delegates; 1 additional delegate to be allowed for each additional 500 members or majority fraction thereof.

Article XII—Assessment in Defense of National and International Unions

SECTION 1. The Executive Council shall have power to declare a levy of one cent per member per week on all affiliated unions for a period not exceeding ten weeks in any one year, to assist in the support of an affiliated National or International Union engaged in a protracted strike or lockout.

SEC. 2. Any Union, International, National or Local, failing to pay within sixty days the levies declared in accordance with Section 1, shall be deprived of representation in convention of the American Federation of Labor and in City Central Bodies

affiliated with the American Federation of Labor.

Article XIII—Defense Fund for Local Trade and Federal Labor Unions

SECTION 1. Unless otherwise ordered by the Executive Council the moneys of the defense fund shall be drawn only to sustain strikes or lockouts of Local Trade and Federal Labor Unions when such strikes or lockouts are authorized, indorsed, and conducted in conformity with the following provisions of this Article:

SEC. 2. In the event of a disagreement between a Local Union and an employer which, in the opinion of the Local Union, may result in a strike, such Union shall notify the president of the American Federation of Labor, who shall investigate, or cause an investigation to be made of the disagreement, and endeavor to adjust the difficulty. If his efforts shall prove futile, he shall take such steps as he may deem necessary in notifying the Executive Council, and if the majority of said Council shall decide that a strike is necessary such Union shall be authorized to order a strike, but that under no circumstances shall a strike or lockout be deemed legal, or moneys expended from the defense fund

on that account, unless the strike or lockout shall have been first authorized and approved by the President and Executive Council.

SEC. 3. When a strike has been authorized and approved by the President and Executive Council, the president of the Local Union, interested shall, within twenty-four hours, call a meeting of said Union, of which every member shall be regularly notified, to take action thereon, and no member shall vote on such question unless he is in good standing. Should three-fourths of the members present decide, by secret ballot, on a strike, the president of the Local Union shall immediately notify the President of the American Federation of Labor of the cause of the matter in dispute, what the wages, hours, and conditions of labor then are; what advances, if any, are sought; what reductions are offered, if any, state the number employed and unemployed; the state of trade generally in the locality, and the number of persons involved, union and non-union; also the number of members who would become entitled to the benefits herein provided should the application be authorized and approved.

SEC. 4. No Local shall be entitled to

benefit from the defense fund unless it has been in continuous good standing for one year; and no member shall be entitled to benefit from said defense fund unless he has been a member in good standing in the American Federation of Labor for at least one year.

SEC. 5. When a strike has been inaugurated under the provisions of Sections 2 and 3, the American Federation of Labor shall pay to the bonded officer of the Union involved, or his order, for a period of six weeks, an amount equal to seven ($7) dollars per week for each member. Each Local Union shall require its treasurer to give proper bond for the safekeeping and disbursement of all funds of the Local. No benefit shall be paid for the first two weeks of the strike. The Executive Council shall have the power to authorize the payment of strike benefits for an additional period.

SEC. 6. No member of a Local Union on strike shall be entitled to weekly benefits unless he reports daily to the proper officer of the Local Union while the strike continues, and no member who shall receive a week's work, three days to be a week, shall receive benefits. Any member refusing other work while on strike (pro-

viding said work is not in conflict with labor's interests) shall not be entitled to any benefits.

SEC. 7. Any union inaugurating a strike without the approval of the Executive Council shall not receive benefits on account of said strike.

SEC. 8. In case of lockout or the victimization of members, the Executive Council shall have power to pay benefits if, upon investigation, it is found that the Local Union whose members are involved did not by their actions or demands provoke the lockout by their employer.

SEC. 9. During the continuance of a strike the executive board of the Local Union shall make weekly reports to the Secretary-Treasurer of the American Federation of Labor, showing the amount of money distributed for benefits, and to whom paid, furnishing individual receipts to the Secretary-Treasurer of the American Federation of Labor from all members to whom such benefits have been paid, and all other facts that may be required.

SEC. 10. Before a strike shall be declared off a special meeting of the Union shall be called for that purpose, and it shall require a majority vote of all members

present to decide the question either way.

SEC. 11. In the event of the defense fund becoming dangerously low through protracted strike or lockout, the Executive Council of the American Federation of Labor shall have the power to levy an assessment of ten cents on each member of Local Trade and Federal Labor Unions, assessments to be restricted to not more than five per year; and further, that there shall always be a surplus of five thousand ($5,000) dollars in the defense fund.

SEC. 12. No Local shall be entitled to any of the benefits of the defense fund unless it requires its members to pay not less than one dollar ($1.00) per month. The financial secretaries and the treasurers of each Local Trade or Federal Labor Union directly affiliated to the American Federation of Labor shall, through the Secretary-Treasurer of the Federation, bond said financial officers in such sum as shall be adequate to protect its funds.

SEC. 13. Local Trade and Federal Labor Unions shall set aside for the maintenance of a local defense fund not less than five cents a month from each member.

SEC. 14. That initiation fees charged by directly affiliated Local Trade or Federal

Labor Unions shall be not less than $2.00 nor more than $15.00, and that 25 per cent of the total initiation fee received by such Local Trade or Federal Labor Union from each individual shall be forwarded to the Secretary-Treasurer of the American Federation of Labor, but in no case shall the amount received by the American Federation of Labor be less than one ($1) dollar, together with the per capita tax; accompanied by a monthly report giving the number of members paid for, and names of those initiated, reinstated, suspended and expelled, and number of members upon whom back per capita tax is being paid and months paid for; on blanks to be furnished by the Secretary-Treasurer of the Federation. When dues are paid, the Financial Secretary of the Local Union shall place a per capita tax stamp in the member's due book. These stamps must be used. Suspended members can be reinstated only by the payment of three months' back per capita tax, in addition to the tax for the current month, and a fee of one ($1.00) dollar for reinstatement stamp.

SEC. 15. That traveling cards issued to members by Local Trade or Federal Labor Unions shall admit members presenting

the same to membership in Local Trade or Federal Labor Unions directly affiliated to the American Federation of Labor.

SEC. 16. That Local Trade and Federal Labor Unions shall be prohibited from assessing their members or appropriating their funds for any purpose other than union or American Federation of Labor purposes. That each directly affiliated union shall forward monthly to the Secretary-Treasurer of the American Federation of Labor a complete statement of all funds received and expended.

SEC. 17. No Local Trade or Federal Labor Union, or Central Body or State Branch, shall disband so long as seven members or five Local Unions desire to retain the charter. Upon the dissolution, the suspension or the revocation of the charter of any Local Trade or Federal Labor Union, or Central Body or State Branch, all funds and property of any character shall revert to the American Federation of Labor, to be held in trust until such time that the suspended or defunct organization may be reorganized and ready to confine its activities and actions to conform with recognized enforceable laws of the American Federation of Labor. It s[h]all further be the duty of

the officers of the Local Trade or Federal Labor Union or Central Body or State Branch, which has been dissolved, or whose charter has been suspended or revoked, to deliver all funds and property to the President of the American Federation of Labor or a representative whom he may designate for that purpose.

Article XIV—Miscellaneous

SECTION 1. Certificates of affiliation shall be granted by the President of the Federation, by and with the consent of the Executive Council, to all National and International Unions and local bodies affiliated with this Federation.

SEC. 2. The Executive Council is authorized and empowered to charter Local Trade Unions and Federal Labor Unions, to determine their respective jurisdictions not in conflict with National and International Unions, to determine the minimum number of members required, qualifications for membership and to make rules and regulations relating to their conduct, activities and affairs from time to time and as in its judgment is warranted or deemed advisable.

SEC. 3. The certificate fee for affiliated

bodies shall be five ($5) dollars, payable to the Secretary-Treasurer of the Federation, and the fee shall accompany the application.

SEC. 4. The American Federation of Labor shall refer all applications for certificates of affiliation from Local Unions or Federal Labor Unions from a vicinity where a chartered Central Labor Union exists to that body for investigation and approval.

SEC. 5. Certificates of affiliation shall not be granted by State Federations of Labor. That power is vested solely in the Executive Council of the American Federation of Labor and the executive officers of National and International Unions affiliated therewith.

SEC. 6. Fraternal delegates attending the convention of the American Federation of Labor shall be entitled to all the rights of delegates from Central Bodies.

Article XV—General Rules Governing Departments of the American Federation of Labor

SECTION 1. For the greater development of the labor movement, departments subordinate to the American Federation

of Labor are to be established from time to time as in the judgment of the American Federation of Labor, or of its Executive Council, may be deemed advisable. Each department is to manage and finance its own affairs.

SEC. 2. To be entitled to representation in any department, organizations eligible to join it must first be and remain in affiliation to the American Federation of Labor.

SEC. 3. To be entitled to representation in Local Councils, or Railway System Federations of departments, Local Unions are required to be part of affiliated National or International Unions affiliated to departments or directly affiliated to the American Federation of Labor. Said Local Unions shall first be and remain in affiliation to Central Labor Unions chartered by the American Federation of Labor.

SEC. 4. The fundamental laws and procedure of each Department are to conform to, and be administered in the same manner as the laws and procedure governing the American Federation of Labor. No Department, Local Council or Railway System Federation of same shall enact laws, rules, or regulations in conflict with

the laws and procedure of the American Federation of Labor, and in the event of change of laws and procedure of the latter, Department, Local Councils, and Railway System Federations are to change their laws and procedure to conform thereto.

SEC. 5. Each Department to be considered the official method of the American Federation of Labor for transacting the portion of its business indicated by the name of the Department, in consequence of which affiliated and eligible organizations should be part of their respective departments and should comply with their actions and decisions, subject to appeal therefrom to the Executive Council and the conventions of the American Federation of Labor. When an organization has interests in departments other than the one of its principal affiliation, in which it shall pay per capita tax upon its entire membership, it is to be represented in and pay per capita tax to the other departments upon the number of members whose occupations come under such other departments, but this in no instance shall be less than 20 per cent of the membership upon which it pays per capita tax to the American Federation of Labor.

SEC. 6. Departments of the American Federation of Labor are to have their headquarters located in the city of Washington, D. C., and if possible in the same building with the headquarters of the American Federation of Labor, unless there are reasons to the contrary satisfactory to the Executive Council of the American Federation of Labor.

SEC. 7. Departments of the American Federation of Labor shall hold their conventions immediately before or after the convention of the American Federation of Labor and in the same city where the convention of the American Federation of Labor is held, at which time and place their laws and procedure shall be made to conform to the laws and procedure of the American Federation of Labor and to go into effect the first day of January immediately following, to conform to the date when the laws and procedure of the American Federation of Labor go into effect. For reasons of transportation, expediency and the methods of representation, the Railway, Metal Trades and Mining Departments may hold conventions at other dates and places, and in that event said departments shall authorize their executive boards to have said departments' laws con-

form to the preceding portion of this section.

SEC. 8. The Executive Council of each Department shall consist of not more than nine members, including the executive officer or officers thereof. This not to apply to or interfere with the procedure on this subject found to be essential in the Railway Department.

SEC. 9. The officers of each Department shall report to the Executive Council of the American Federation of Labor that the Department has conformed to the laws, procedure and actions of the American Federation of Labor as they affect each Department.

SEC. 10. In the Building and Construction Trades Department (on the basis of its law of 1913), organizations having seven or more delegates, each such delegate shall on roll-call be entitled to two votes. A roll-call shall be held upon the demand of one-fourth of all delegates whose credentials have been accepted and who have been seated in the conventions.

SEC. 11. The officers of the various departments shall submit a quarterly report to the Executive Council of the American Federation of Labor of the work done by

their Department, and its general conditions.

SEC. 12. At all regular meetings of the Executive Council of the American Federation of Labor, there shall be present, during some period of the Council meeting, the executive officer or officers of each Department, to take up with the Council matters that may be of mutual interest.

SEC. 13. A page of each issue of the American Federationist to be available to and to be used by each Department for official report or for publication of some subject identified with the Department, each Department to designate its officer to submit the report.

Article XVI—Amendments

This Constitution can be amended or altered only at a regular session of the convention, and to do so it shall require a two-thirds vote.

FOLLOWING ARE RULES ADOPTED BY THE EXECUTIVE COUNCIL

Upon resolution, duly made, seconded and passed, the following rules were adopted by the Executive Council of the American Federation of Labor, pursuant

to their constitutional authority as set forth in Section 8, of Article 9, of the Constitution of the American Federation of Labor, in session in Washington, D. C., May 5-20, 1936, and amended by convention action, New Orleans, La., November 26, 1940.

"1. State Federations of Labor chartered by the American Federation of Labor shall adopt their policies—legislative, political, civic and organizational—to the policies adopted by the Conventions of the American Federation of Labor, and if any State Federation of Labor purposely deviates from the policies of the American Federation of Labor, or if any State Federation of Labor violates any of the laws or provisions of the Constitution of the American Federation of Labor or any order of its Executive Council pursuant thereto, such State Federation of Labor shall be dealt with by the Executive Council. In the event the Executive Council finds a State Federation of Labor guilty after hearing of charges filed, the Executive Council may take any of the following steps: (a) Forgive said breach with or without conditions to be fulfilled by said State Federation of Labor; (b) suspend said State Federation from the American Federation

of Labor and from enjoying the benefits from said membership for a definite or for an indefinite time; (c) penalize said State Federation for said breach in any other way; or (d) if the actions of said State Federation of Labor have been so serious that all relations between it and the American Federation of Labor should be severed, revoke its charter subject to appeal to the next succeeding convention of the American Federation of Labor.

"2. The President of the American Federation of Labor, under authority vested in the Executive Council of the American Federation of Labor, is hereby authorized to discipline any Central Labor Union or any Federal or Local Labor Union and where the President of the American Federation of Labor in pursuance of this authority has disciplined any Central Labor Union, or Federal or Local Labor Union, and has suspended or expelled its officials, or has suspended its charter, an appeal may be taken by the aggrieved party to the Executive Council, and if the said appeal presents a prima facie case of error on the part of the President, the Executive Council may hear and determine the appeal.

"3. The Executive Council shall investi-

gate the affairs and audit the books of Federal and of Local Labor Unions periodically, and if said audit and investigation shows that said Federal or Local Labor Union has more members than it is paying a per capita tax on, the Executive Council shall take steps to collect in full the per capita tax due the American Federation of Labor."

Approved by 1936 convention held in Tampa, Florida, (page 497 official proceedings).

The following rule was adopted at a meeting of the Executive Council of the American Federation of Labor held at the Cosmopolitan Hotel, Denver, Colorado, October 14, 1937:

Expenses Incurred in Recovering Property and Funds are Chargeable to Funds or Property Recovered

"Whenever a directly chartered trade or federal labor union or state or city central body affiliated with the American Federation of Labor secedes, or its charter is suspended or revoked, and demand is made upon such organization or its officers to deliver to the President of the American Federation of Labor, or his authorized representative, the records, property and

funds of such organization, and such demand is refused, then all expenses, of whatever nature, incurred by the American Federation of Labor in recovering such records, property and funds, shall be a lawful charge upon the property and funds involved, and on recovery thereof, the American Federation of Labor shall reimburse itself from the property and funds recovered."

RULES AND ORDER OF BUSINESS

Adopted by the Cincinnati, 1939, Convention of the American Federation of Labor

RULE 1. The convention shall be called to order at 9:30 a. m. and remain in session until 12:30 p. m. Reconvene at 2:30 p. m. and remain in session until 5:30 p. m. on the following days: Monday, Tuesday, Wednesday, Thursday and Friday. There shall be no session on Saturday of this week. This convention, however, will meet on Saturday of next week if the business of the convention is not completed.

RULE 2. Any delegate failing to fill in his attendance card within 30 minutes after the convention is called to order shall be marked absent, but in the event of un-

avoidable absence, he may so report to the Secretary and be marked present.

RULE 3. If a delegate while speaking be called to order, he shall at the request of the Chair take his seat until the question of order is decided.

RULE 4. Should two or more delegates rise to speak at the same time, the Chair shall decide who is entitled to the floor.

RULE 5. No delegate shall interrupt another in his remarks, except to raise a point of order.

RULE 6. A delegate shall not speak more than twice upon a question until all who wish to speak have had an opportunity to do so.

RULE 7. A delegate shall not speak more than twice upon the same question without permission from the convention.

RULE 8. At the request of five delegates, the mover of a motion shall submit it in writing.

RULE 9. It shall require at least 30 delegates to move the previous question.

RULE 10. Speeches shall be limited to ten minutes, but the time of speaking may be extended by a vote of the convention.

RULE 11. A motion shall not be open for

discussion until it has been seconded and stated from the Chair.

RULE 12. A motion to lay on the table shall not be debatable, except as limited by Robert's Rules of Order.

RULE 13. A motion to reconsider shall not be entertained unless made by a delegate who voted with the majority, and shall receive a majority vote.

RULE 14. All resolutions shall bear the signature of the introducer and the title of the organization he represents and shall be submitted in duplicate form.

RULE 15. No motion or resolution shall be voted upon until the mover or introducer has had a chance to speak upon it if he or she so desires.

RULE 16. The reports of committees shall be subject to amendments and substitutes from the floor of the convention, the same as other motions and resolutions.

RULE 17. When a question is pending before the convention no motion shall be in order except to adjourn, to refer, for the previous question, to postpone indefinitely, to postpone for a certain time, to divide or amend, which motions shall have precedence in the order named.

RULE 18. When a roll call has been taken and all delegates present have had an opportunity to record their votes, the ballot shall be declared closed.

RULE 19. When a roll call ballot has been ordered, no adjournment shall take place until the result has been announced.

RULE 20. Robert's Rules of Order shall be the guide on all matters not herein provided for.

Order of Business

1. Reading of Minutes of previous session shall be dispensed with unless called for.
2. Report of Committee on Credentials.
3. Reports of Officers.
4. Reports of regular committees.
5. Reports of special committees.
6. Unfinished business.
7. New business.
8. Election of officers.
9. Selection of next meeting place.
10. Good of the Federation.
11. Adjournment.

157

Index to Constitution

A

Amendments 49
Assessments 29, 35, 40, 42
Auditing Committee 6

B

Bonds required for directly affiliated locals..... 38, 40

C

Central bodies, laws governing..... 30–35
Central bodies and local departments, local unions should be represented in both..... 34, 45
Central bodies, basis of representation of locals in 35
Central bodies, discipline of..... 16–18
Central bodies may not order affiliated locals to take a strike vote except upon authority of international unions 32
Central bodies may not seat suspended, seceded, dual or unaffiliated unions..... 30
Central bodies may not reject credentials presented by duly elected delegates of affiliated unions.... 30–31
Central bodies, regulating endorsement of boycotts. 32–33
Central bodies, separate, comprised of colored organizations, Executive Council authorized to issue charters 32
Charter applications of Federal Labor and local unions shall be referred to central body of same district for approval..... 44
Charter fee 43
Charters may not be revoked except when ordered by a two-thirds majority vote of the convention by roll call..... 27–28
Charters, issuance authorized..... 26–27, 43
Charter must have been obtained one month prior to convention to entitle organization to representation 13

Charters not to be granted except upon a clear definition of jurisdiction and adjustment with interested international unions where there may be a trespass upon their jurisdiction..... 26–27
Charters shall not be granted by State Federations of Labor 44
Committees of Convention..... 6
Communists, representation prohibited in Central and State Bodies..... 13
Convention, except by a two-thirds vote, none other than trade union members may address.. 9
Conventions, special 5
Convention, time for holding..... 4
Credentials, Committee 6–7

D

Defense fund for directly affiliated unions, laws governing 36–43
Delegates must be members in good standing of organizations they represent..... 13
Delegates shall be elected at least two weeks previous to the convention..... 11
Departments, rules governing..... 44–49
Departments, Conventions, time of holding..... 47
Departments, basis of membership taxation..... 46
Departments, Executive Council membership..... 48
Departments, executive officers shall attend meetings of the Executive Council, A. F. of L..... 49
Department, Building and Construction Trades, voting strength of organizations..... 48
Departments shall admit only affiliated organizations 45
Departments shall submit quarterly reports..... 48
Departments to have headquarters in Washington, D. C..... 47
Disbandment of directly affiliated locals..... 43
Dues of directly affiliated locals..... 26, 40
Due stamps to be issued to directly affiliated locals 20, 41

159

E

Executive Council, duties of.....23–28, 43
Executive Council shall have power to make rules not in conflict with the constitution..... 25, 27
Executive Council, rules adopted by..... 49–53
Executive Council, provision to fill vacancy..... 25
Executive Council, remuneration..... 24
Executive session, Convention has power to order.. 9

F

Federal labor unions, regulations governing formation 43
Finance Committee, duties..... 22–28
Financial accounts shall be open at all times to the President and Executive Council..... 14
Fraternal delegates attending the convention entitled to rights of delegates from central bodies.. 44
Fraternal delegates, remuneration..... 24
Funds, A. F. of L., investment..... 22–28
Funds and properties of disciplined unions.....16–18, 52
Funds of directly affiliated local unions to be used exclusively for union purposes..... 42
Funds of directly affiliated locals to be reported upon monthly 42

G

Grievances decided by a previous convention shall not be considered except upon recommendation of Executive Council, nor where parties thereto have not previously held a conference..... 10

H

Headquarters of the President and Secretary-Treasurer shall be located in Washington, D. C.. 14

I

Indebtedness of affiliated unions must be paid within three months to avoid suspension..... 30
Initiation fees of directly affiliated locals..... 29, 40–41

L

Local unions, directly affiliated, may not disband as long as seven members desire to retain the charter 42
Local unions, directly affiliated, laws governing ... 36–43
Local unions, discipline of 16–18
Local unions, Executive Council authorized to charter 43
Local unions notified to join international unions shall be allowed three months in which to comply 23
Lockout benefits 36–40

M

Membership reports of affiliated organizations shall be furnished to the Secretary-Treasurer 20, 41
Members of national or directly affiliated local unions working at other trades shall join the unions of such vocations 26–27

N

Name 8

O

Objects of A. F. of L. 3–4
Officers 14
Officers of A. F. of L. must be members of affiliated unions 14
Officers' terms, expiration date 14
Organizers, remuneration 24

P

Per capita tax stamps must be used by directly affiliated locals to receipt for members' dues 41
Politics, party, shall have no place in the convention 10
Preamble 2
President, duties 6, 15–18
President, salary 15

President, provision to fill vacancy in office..... 15–16
President shall be member of the succeeding convention in case he is not a delegate, without vote 14

Q

Quorum, number necessary for..... 9

R

Reinstatement of suspended members of directly affiliated locals 41
Representation of affiliated organizations in annual convention, basis of..... 10–13
Resolutions, submission for convention action..... 7–9
Revenue 28–29
Revocation of charters..... 27
Roll call, one-tenth of delegates present necessary for 12
Roll call of convention, basis..... 12
Rules and order of business governing convention 10, 53–56
Rules adopted by Executive Council..... 49–53

S

Secretary-Treasurer, duties 18–21
Secretary-Treasurer, salary 21
Secretary-Treasurer shall be member of the succeeding convention in case he is not a delegate, without vote 14
Secretary-Treasurer, bond 21
State bodies, discipline of..... 16
Strikes of directly affiliated local unions, rules governing payment of benefits.....25–26, 36–40
Suspended, expelled or seceded organizations or persons may not be seated in the convention..... 13

T

Tax of affiliated organizations must be paid in full to the second month preceding the regular or special convention, to be entitled to seat in convention 29

Tax payable by affiliated unions..... 29
Titles, change shall not be permitted, where there is any trespass upon the jurisdiction of an affiliated organization 26
Transfer of directly affiliated local unions to national and international unions..... 23
Traveling cards to be accepted by directly affiliated unions 41–42

V

Votes, basis of..... 10, 11

AMERICAN FEDERATIONIST

Official Publication

American Federation of Labor

EVERY worker should be a constant reader of the American Federationist. The American Federationist is one of the educational agencies through which the Federation presents discussions of its fundamental principles, its policies, and their application to the varied problems of the life of the worker. The magazine is necessary to workers who wish to be informed on union policies and to those who wish to understand Labor, because it is an important force in the development of public policy.

If you can not obtain it through your news stand, write to William Green, American Federation of Labor Building, Washington, D. C. Price, $2 a year.

CONSTITUTION

AND

BY-LAWS

OF

Alabama State Federation of Labor

As Amended and Adopted at the Convention Held in Montgomery, Ala., May 31-June 1-2, 1943

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INDEX TO CONTENTS

Article 1—Preamble .....Page 3

Article 2—Objects of the Federation .....Page 3

Article 3—Meetings of the Federation .....Page 4

Article 3—Representation .....Page 5

Article 3—Order of Business.....Page 8

Article 4—Officers .....Page 8

Article 4—Executive Council.....Page 9

Article 5—Duties of Officers.....Page 11

Article 5—Duties of Executive Council .....Page 14

Article 6—Nomination, Election and Installation of Officers..Page 16

Article 7—Revenue .....Page 18

Article 8—Miscellaneous.....Page 18

CONSTITUTION AND BY-LAWS

As Amended and Adopted at the Convention Held at Montgomery, Ala., May 31-June 1-2, 1943

ARTICLE I

Section 1. This organization shall be known as the Alabama State Federation of Labor, with headquarters to be located in Birmingham, Alabama, and may be changed by the Executive Council. It shall be affiliated with the American Federation of Labor, and shall be composed of Trade Unions and Labor Organizations that are affiliated with the American Federation of Labor, and shall conform to its rules and regulations.

ARTICLE II

Objects of the Federation

First—To support such questions as may be for the benefit of the wage earners and mankind generally and strive to obtain Legislative enactment of such measures as will be beneficial to the workers of the state, and the repeal of oppressive and unjust laws.

Second—To use all honorable means to correct or abolish the abuses under which the wage earners are now laboring and to secure for them their just rights and privileges.

Third—To aid in the establishment of Central Labor Unions in every city and town in the state.

Fourth—To promote the cause and general welfare of all Organized Labor by a more systematic and universal use of the Union Labels, Shop Cards and

Working Buttons, and to give moral support to such firms and factories as recognize the Union Label and its merits.

Fifth—To cause all members of Organized Labor to avail themselves of the right of franchise for the purpose of furthering the interests and welfare of the working people at the ballot box.

ARTICLE III

Meetings of the Federation

Section 1. The sessions of this body shall be held annually on the third Monday in April and shall remain in session until all business is completed, at such time and place as have been previously selected by the Convention; provided the chosen city meets the approval of the Executive Council as being able to accommodate the Convention.

Payments on voluntary basis $2.00 registration fee by each delegate in attendance at Convention, to establish Convention Fund to help defray expenses of the Convention cost. To be administered by Executive Council of the Federation.

Section 2. A special Convention shall be called by the Executive Council upon request of one-third of the Unions and Central Bodies affiliated with this Federation or on their own initiative should the necessity arise. Thirty days' notice should be given of the special Convention and the call shall specify the reason for the special Convention. No other business shall be transacted other than that which is specified in the call unless by a two-third vote of delegates present and voting.

Section 3. Central Labor Unions, Union Label Leagues, and Local Unions eligible to affiliate with this Federation of Labor may do so by filing affiliate applications with the Secretary-Treasurer, stating crafts, number of locals, total membership, or, if Central Labor Body, number of locals affiliated. Three months back per capita tax must accompany all applications for affiliation.

Section 3a. All resolutions shall be presented in typewritten form in duplicate and, where possible, sent to the office of the Secretary-Treasurer at least one week prior to the Convention.

Section 3b. No endorsement or condemning of any political candidate in convention, but be referred to the Executive Council for action and the Executive Council shall notify all affiliated locals.

Representation

Section 4. If provisions of Section 3 have been complied with, the representation from Central Labor Unions shall be one delegate each. (Provided no delegate shall represent a Central Labor Body or Union Label League unless their own local Union is affiliated with the Alabama State Federation of Labor. Union Label Leagues and authorized Chartered Auxiliaries may have one fraternal delegate each without voice or vote and shall pay no per capita tax.) Local Unions shall be entitled to two delegates for fifty members or less, and one additional delegate for every fifty members, or majority fraction thereof after the first fifty members, and one additional delegate for each 100 members above 500. The above shall be bas-

ed on yearly average paid per capita tax during the year ending sixty days prior to the next Convention. (To conform with Article 8, Section 2), the secretary shall send credentials based upon this section only, and not for added membership after sixty days prior to Convention.

(Provided, however, such Labor Unions shall have been affiliated with this Federation as provided herein, and shall have complied with all the laws of the Federation)

Provided, that no Local Union or affiliated organization shall be entitled to representation in a convention, if such organization owes more than one month's per capita tax to the Federation.

Any Local Union or Central Body more than six months in arrears shall stand suspended. All such suspended organizations shall be required to pay all back per capita tax due to this Federation and an affiliation fee of $10.00 sixty days prior to the Convention to be entitled to representation in said Convention. Any Local Union or Central Body twelve months or more in arrears may reaffiliate by the payment of $10.00 initiation fee and twelve months back per capita tax. The Executive Council may exempt a Local Union from paying the affiliation fee in case of strikes or lockouts.

Section 5. No organization which is seceded from or suspended from any National or International Union shall be allowed representation in this Federation.

Section 6. All delegates before taking seats in the Convention shall present original credentials, signed by the proper officers of their organizations, with the seal of same attached, together with the names of the alternate delegates. Where delegates or alternate delegates are seated without contest no change shall be made.

Section 7. Any delegate to the State Federation of Labor Convention who disturbs or has disturbed the peace and dignity of the Convention shall be debarred from a seat or a vote in the deliberation of this Convention.

Section 8. No Union shall be exempt from dues except by application to the Executive Council, showing its financial condition to be such as entitles it to exemption. (The Secretary-Treasurer may make exemptions in case of strikes or lockouts).

Section 9. The President, Secretary-Treasurer, and one member of some affiliated Union in the city where the Convention is to be held (said member to be appointed by the President), shall constitute the Committee on Credentials, who shall meet the evening before the Convention opens and make up an official roster of delegates from the duplicate credentials sent in to the Secretary-Treasurer and shall report immediately after the opening of the Convention.

Section 10. The roll shall then be called for verification and correction, and in the event of protest or contest the President shall appoint a committee of five to investigate and report on said

contest. Contested credentials shall not be recognized unless sustained by the Convention after report of the Special Committee.

Section 11—**Order of Business**

1. Roll Call of Delegates
2. Report of Committee on Credentials
3. Appointment of Committees
4. Reports of Officers
5. Reports of Regular Committees
6. Reports of Special Committees
7. Unfinished Business
8. Good of the Federation
9. New Business
10. Nomination of Officers
11. Election of Officers
12. Selection of Next Convention City
13. Installation of Officers
14. Adjournment.

ARTICLE IV
Officers

Section 1. The Officers of the Alabama State Federation of Labor shall consist of a President, Nine District Vice-Presidents, and four Vice-Presidents at Large; Two (2) shall be women; a Secretary-Treasurer, and a Delegate to the American Federation of Labor.

In addition to the regular elected Officers, the President is hereby authorized to appoint a member of an affiliated Local Union when deemed necessary to assist any group of workers and designate him or her as special Vice-President clothed with all the authority of a Vice-President for the period of time appointed.

The Vice-Presidents-at-Large, shall be elected on a geographical basis, Two (2) from North Alabama, and Two (2) from South Alabama.

Executive Council

Section 2. The members of the Executive Council shall be composed of the following officers: President, Secretary-Treasurer, four Vice-Presidents-at-Large and nine District Vice-Presidents. The Executive Council shall meet upon adjournment of the Convention. These sessions shall not exceed more than one day unless some special business makes it imperative to stay in session longer. They shall transact current business and plan out work to be done by the Federation. The Executive Council members shall receive actual expenses and compensation at the rate of six dollars ($6.00) per day while in session (Sundays included), provided the six dollars ($6.00) per day while in session is available from the finances of the Federation and is sufficient to pay same and maintain in the treasury one thousand dollars ($1,000.00).

Section 3. The State shall be divided into nine districts, namely: Birmingham District, composed of Birmingham, Bessemer, Blocton and vicinity; Muscle Shoals District, composed of Florence, Sheffield, Tuscumbia, Decatur and vicinity; Montgomery District, composed of Montgomery, Selma and vicinity; Mobile District, composed of Mobile and vicinity, Gadsden District, composed of Gadsden and vicinity; Tuscaloosa Dis-

trict, composed of Tuscaloosa and vicinity; Anniston District, composed of Anniston and vicinity; Jasper District, composed of Jasper and vicinity; Huntsville District, composed of Huntsville and vicinity. The delegates of each of the above Districts shall select their Vice-Presidents, to be confirmed by the Convention. No officer shall be eligible for re-election who does not have proper credentials. No one will be eligible for election as an officer whose Local Union is not in good standing with the Alabama State Federation of Labor. Any Vice-President that belongs to a Local Union that becomes suspended shall cease to be a Vice-President. The Secretary-Treasurer shall notify the President, who will fill the vacancy as outlined in this Constitution.

Section 4. The Legislative Committee shall consist of the President, Secretary-Treasurer and any others selected by the President, whose duty it shall be to use all means possible for the enactment of laws favorable to Organized Labor, and to have repealed all laws antagonistic to Labor Organizations. Said Committee shall make report to the Federation annually.

Section 5. All official correspondence carried on by the officers shall be done on the stationery of the Federation, and copies shall be retained and made a permanent record in the office of the Secretary-Treasurer.

Section 6. When the Executive Council shall be called together at the Annual Convention, or when legally called

between Conventions, their compensation shall be at the rate of six dollars ($6.00) per day, including Sundays, and their actual necessary expenses; however this shall not apply to any officer receiving an annual or monthly salary from the Federation. And shall conform to the provisions of Section 2.

Section 7. When a vacancy occurs in the Executive Council, the Central Body or Union in the city from which the officer was elected shall be consulted before the appointment is made by the Executive Council.

Section 8. The Executive Council may select a General Counsel and, when deemed necessary, the Executive officers may appoint an additional attorney to aid in litigation or in drafting legislation.

Section 9. The delegate to the American Federation of Labor shall receive, when the finances of the Federation will permit, six dollars ($6.00) per day and actual expenses; however, this shall not apply to any officer receiving an annual or monthly salary from the Federation.

ARTICLE V
Duties of Officers

Section 1. It shall be the duty of the President to preside at all meetings of the State Federation and preserve order therein. He shall appoint all committees not otherwise ordered, sign all drafts on the Treasury for money, report at each annual meeting the workings of the Federation, conduct such correspondence and perform such du-

ties as pertain to the office. Special meetings of the Executive Council may be called by the President, when necessary, or by six Vice-Presidents, upon written request. The President shall receive $50.00 per month for the faithful performance of his duties, payable semi-monthly.

Section 2. It shall be the duty of the Vice-Presidents to use all honorable means to further the organization work and cooperate with all organizations affiliated with the State Federation of Labor, and assist locally to further the interests of the Labor Movement, and to render a quarterly report to the Secretary-Treasurer of the conditions of their respective districts.

Provided, however, that no Vice-President shall receive any compensation or be paid expenses unless a full and complete report relative to his district is made at the meeting of the Executive Council.

The Vice-Presidents-at-Large shall be members of the Executive Council, and can be selected from any district in their geographical area; and shall be elected by the delegates.

The special duties of these officers shall be to look after the welfare of Women and Children Workers, also the colored workers in the State.

Section 3. It shall be the duty of the Secretary-Treasurer to keep a correct record of the proceedings of the Convention of the State Federation and of the Executive Council meetings, together with the roll call of members present at each meeting of the Executive

Council and submit same in open Convention, together with the expenses incurred at each meeting. He shall keep an accurate account of each organization. Issue such calls as may be ordered by the President. He shall keep a correct account of all money received and disbursed and shall turn all books and papers over to the Auditors previous to the assembling of the Convention for the fiscal year ending April 12, having his account ready for settlement the day of election, or when called upon by the Executive Council; and shall at the end of his term of office deliver all books, money, etc., in his possession to his successor in office or to the Executive Council of the Federation. The Executive Council shall at all times have full access to the books and records for inspection. He shall be the custodian of all movable property of the Federation. He shall be bonded in a surety company through the American Federation of Labor in the sum of fifteen thousand dollars ($15,000.00) and the Executive Council shall make the matter of bonding the Secretary-Treasurer one of the first orders of business it shall transact, and the expenses of the bond shall be borne by the Federation and in the event the Executive Council deems it necessary the bond shall be increased by it.

The Secretary-Treasurer shall devote his entire time to the duties of his office and shall receive a salary of two hundred and seventy-five dollars $275.00 per month and necessary expenses, payable semi-monthly.

180

Duties of Executive Council

Section 4. It shall be the duty of the Executive Council to conduct the affairs of the Federation between conventions of the organization and use all honorable means of organizing Local Unions and Central Labor Unions throughout the State. They shall have the power to sit as trial committee in case charges are preferred against any officer of the Alabama State Federation of Labor. The complainant shall furnish written charges against the defendant and copies shall be sent by the Secretary of the State Federation of Labor to the defendant not less than ten days before the trial. The defendant may be represented by a member in good standing of the American Federation of Labor. If found guilty, he may be reprimanded or removed from office, subject to an appeal to the next Convention and from there to the President of the American Federation of Labor. The Executive Council shall meet the day before the assembling of the Convention and select from the delegates whose credentials have been filed with the Secretary-Treasurer the following committees: At least two Sergeants-at-Arms; On Rules; On Legislation; On Officers' Reports; On Grievances; On Resolutions; On Union Labels; On Constitution; On Organization; On Convention City. Any vacancy that shall occur on committees through the failure of attendance of delegates shall be filled by the President after the assembling of the Convention. The Executive Council shall

assist the President in promoting all Labor measures that may be intended to advance the interests and welfare of the working people of the State. In case of a strike or lockout involving any Union or Trade Association in this body, the facts shall be laid before the President, and when approved by the Executive Council, the President shall forthwith request all affiliated Unions and their membership to render financial aid or other assistance as may be desired. Provided that nothing in the Constitution shall compel sympathetic strikes to aid the strikers.

Section 5. The Auditors shall be appointed from the Executive Council by the President, whose duty it shall be to audit the books of the Secretary-Treasurer, give an itemized account of all receipts and expenditures and report their findings at the opening of the Convention.

Section 6. It shall be the duty of all officers, the Executive Council and chairman of all Standing Committees to have their annual reports in the hands of the Secretary-Treasurer not later than ten (10) days prior to the Convention. It shall be the duty of the Secretary-Treasurer to have these reports read at the opening of the Convention. The Annual Convention of the State Federation of Labor being the Supreme Governing Body of the State Federation of Labor, it shall be the duty of any and all officers, the Executive Council, the Legislative Committee or any other designated persons or body to faithfully carry out the orders of the

Convention, and if it becomes apparent after attempting to carryout any special order of the Convention that such cannot be successfully done, or literally carried out or fulfilled, the Executive Council shall immediately meet and formulate such plans as may appear reasonable and likely of success.

ARTICLE VI
Nomination, Election and Installation of Officers

Section 1. Nomination of officers of this Federation shall be held annually in the afternoon of the second day of the convention.

Section 1-A. And prior to this time district Vice Presidents shall be selected by each district so as to be placed in nomination when nominations are opened on the floor of the convention.

Section 2. Nominations for the convention city will also be made at this time.

Section 2-A. The secretary-treasurer shall then list all nominations and hand them to a printer located in the convention city with instructions to have printed a sufficient number of ballots in the following order:

PRESIDENT
Vote for one
(List of nominees)
SECRETARY-TREASURER
Vote for one
(List of nominees)
LADY VICE-PRESIDENTS AT LARGE
NORTHERN DISTRICT
Vote for one

(List of nominees)
SOUTHERN DISTRICT
Vote for one
(List of Nominees)
FOR DISTRICT VICE PRESIDENTS
BIRMINGHAM DISTRICT (Vote for one)
(List of nominees)
MUSCLE SHOALS DISTRICT (Vote for one)
(List of nominees)
MOBILE DISTRICT (Vote for one)
(List of nominees)
GADSDEN DISTRICT (Vote for one)
(List of nominees)
TUSCALOOSA DISTRICT (Vote for one)
(List of nominees)
ANNISTON DISTRICT (Vote for one)
(List of nominees)
JASPER DISTRICT (Vote for one)
(List of nominees)
HUNTSVILLE DISTRICT (Vote for one)
(List of nominees)
COLORED VICE PRESIDENTS AT LARGE
NORTHERN DISTRICT (Vote for one)
(List of nominees)
SOUTHERN DISTRICT (Vote for one)
(List of nominees)
FOR NEXT CONVENTION CITY
Vote for one
(List of cities)
DELEGATE AMERICAN FEDERATION OF LABOR CONVENTION
Vote for one
(List of nominees)

Section 3. Election shall be held in

the afternoon of the last day of the Convention. Election shall be upon said ballot prescribed in Section 2 and a majority of all votes cast shall be required to elect. If no choice is made on the first ballot, the candidate receiving the lowest number of votes shallbe dropped and the balloting shall continue until a choice is made.

Section 3-A. A majority of all votes cast shall be required to select the Convention city, if a majority of all votes is not received on the first ballot the city receiving the lowest number of votes shall be dropped and the balloting continued until a selection is made.

When the election is declared in order the President shall appoint two tellers who are agreeable to the candidates, who will examine the ballot box and present the same to the President and Secretary for examination, after which it shall be closed, locked and the tellers will take their station near the ballot box and see that no persons are within ten feet of the ballot box except as the delegates march to the ballot box as the secretary or his assistant calls the roll of delegates.

Each delegate shall be required to mark his ballot plainly, and deposit in the ballot box after his name is called by the secretary-treasurer and no delegate will be permitted to have more than one ballot in his possession at any one time.

Section 4. The officers of this Fed-

eration shall be elected for one year, provided the organization which they represent shall have been in continuous affiliation and good standing for two years, and shall hold office until their successors are elected and installed, unless removed from office as provided for in this Constitution.

Section 5. A Tellers Committee, consisting of three delegates who are not candidates, shall have charge of the election, and shall certify to the President the result of the election. They shall call the names of the candidates aloud as they appear on the ballot, and the Secretary shall keep a tally. And the tally of the Election Committee and the tally of the Secretary shall correspond with each other.

Section 6. The officers, after election, shall arrange themselves in order in front of the presiding officer and repeat the following pledge:

"I (give full name) do hereby sincerely pledge my honor to perform the duties of my office as prescribed by the laws of this Federation; and to bear true allegiance to the American Federation of Labor. I will deliver to my successor in office all books, papers, and other property of this Federation that may be in my possession at the close of my official term. I will also deliver all property of the American Federation of Labor to the president of same on demand. All of this I solemnly promise with the full knowledge that, to violate this pledge is to stamp me as a man devoid of principle and destitute of honor."

ARTICLE VII

Section 1. The revenue of this Federation shall be derived from affiliated Unions, which shall pay direct to the Secretary-Treasurer per capita tax at the rate of Five cents per member per month, twelve months per year. (Except as provided for in Article III, Section 8).

Section 2. All Central Bodies shall pay to the Federation on the following basis: Those having affiliations of seven (7) local Unions or less, $1.00 per month; those having affiliation of more than seven (7) and not more than twenty-five (25) Local Unions, $2.50 per month; those having affiliation of twenty-six (26) or more Local Unions, $5.00 per month.

ARTICLE VIII

Miscellaneous

Section 1. On all questions not covered by this Constitution the Executive Council shall have power to make rulings to govern until the next Convention. All rules shall conform to the spirit of this Constitution.

Section 2. The President and the Secretary-Treasurer shall issue the call for the Annual Convention at least sixty (60) days before the Convention, and there shall be sent out with the call sufficient credentials and duplicates to each affiliated organization; the credentials shall be in such form that it will bear the names of delegates and his or her alternate. The duplicate credentials to be sent in to the Secretary not later than the second Monday in April. Provided, this does not apply to

locals or eligible bodies organized within sixty days before convening of Convention. The credentials shall bear the names of the delegates, and alternate delegates, signed by the organization with the seal attached. The original credentials, similarly filled out, shall be presented by the delegate or delegates or alternate to the Credentials Committee before the opening of the Convention.

Section 3. Any organization or Union a party to this Federation, withdrawing must give thirty days' notice to the Secretary-Treasurer in writing, signed by the Executive Officer, and bearing the seal of such organization and the approval of their national or international organization. Such organization shall not be in arrears for dues and against whom no charges are pending.

Section 4. When not otherwise specified a majority of a committee shall constitute a quorum. When a Convention is called a majority of the accredited delegates thereto shall constitute a quorum for the transaction of business.

Section 5. The Executive Council of the Alabama State Federation of Labor shall select the Official Organs of this Federation. The Council shall place such selected Official Organs under signed agreements to adhere strictly to the principles and policies of the Ala-

bama State Federation of Labor.

Should the Executive Council find upon sufficient proof, that said agreement has been deviated from by any said Official Organ, it shall immediately abrogate said agreement and cancel its endorsement.

The soliciting of advertisements and subscriptions in the name of the Alabama State Federation of Labor will be prohibited, except by such publication as is owned or controlled by the Alabama State Federation of Labor.

Section 6. This Constitution is effective immediately upon adoption, and shall only be altered or amended at the Annual Convention of this Federation by the concurrence of a majority of the members present unless otherwise specified herein.

EXHIBIT "3"

189

WORKING RULES

of

Jefferson County and Vicinity CARPENTERS District Council

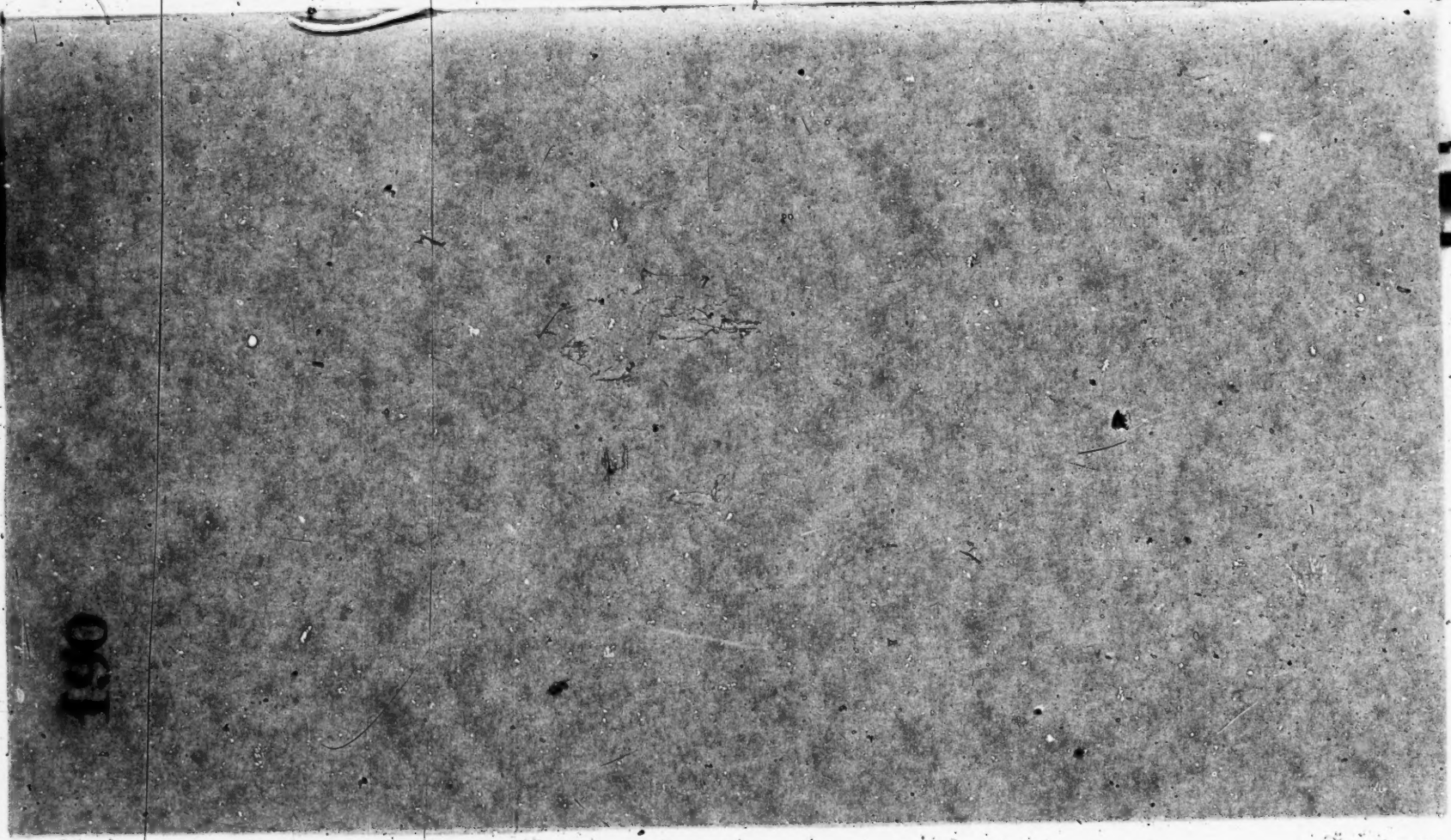
of the

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

1942-43

BIRMINGHAM, ALABAMA

BIRMINGHAM PRINTING CO.


190

WORKING RULES FOR JEFFERSON COUNTY AND VICINITY DISTRICT COUNCIL BIRMINGHAM, ALABAMA

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

WORKING RULES

SECTION I

"A"—Eight hours shall constitute a day's work, to be performed between the hours of 8 A.M. and 5 P.M.

"B"—Forty hours shall constitute one week's work, and shall be between 8 A.M. Monday and 5 P.M. Friday.

"C"—All overtime done between 8:00 A.M. Monday and midnight Friday shall be done at the rate of time and one-half (1½).

"D"—All overtime done between midnight Friday and 8:00 A.M. Monday shall be done at the rate of double time. Each man so working shall get a written permit from the Business Representative for such work, and in no case shall he depend upon the employer to get the permit for him.

For failure to get permit he shall be fined $15.00.

"E"—All work done on July Fourth, Thanksgiving, Labor Day, and Christmas shall be done at the rate of double time, no work to be done on Labor Day except to save Life or Property.

"F"—When July Fourth or Christmas comes on Sunday, the following Monday shall be observed as the holiday prescribed in Paragraph "E."

SECTION II

"A"—Work may be done in two or more shifts, seven (7) hours to constitute a day's work on the second and third shift, with eight hours' pay for each seven-hour shift. All work started after 5:00 P.M. shall be paid 8 hours' pay for 7 hours' work, except as provided in paragraph "B" of this section.

"B"—All time less than seven hours that is worked in the second and third shifts shall be paid at the regular overtime rate, except due to weather or other conditions beyond the control of the contractor.

"C"—Any misunderstanding that might arise as to the above conditions must be referred to the Business Agent.

"D"—No man to work on more than one shift per day, except when no other men can be had.

"E"—No member shall be allowed to work overtime for a contractor employer while employed by another.

SECTION III

"A"—The minimum rate of pay for journeymen shall be $1.25 per hour.

"B"—All foremen shall receive not less than 12½c per hour more than the journeyman rate of pay. Up to 6 men and all over 6 men not less than 37½c per hour more than the journeyman's scale per hour. All foremen working on salary shall not receive less salary than they would receive on an

hourly basis. All foremen must be members of the United Brotherhood.

"C"—There must be a carpenter foreman when three or more carpenters are employed.

"D"—each contractor or employer may use one apprentice, with two or more journeymen up to six; and one apprentice to each six additional journeymen. Honorary members and special card members included in this as apprentices.

"E"—The minimum rate of pay for apprentices shall be as follows:

First year	55c	per hour
Second year	67½c	per hour
Third year	80c	per hour
Fourth year	92½c	per hour

We also urge and favor a more extensive use and training of apprentices.

"F"—Honorary and disabled members may be allowed to work for less than the scale, but must apply to the Council for permission to do this.

"G"—The minimum rate of pay for maintenance men shall be 85% of the regular outside rate of pay. Any work other than regular maintenance work to be paid at the regular outside rate.

"H"—All carpenter tools shall be used only by journeymen, apprentices and carpenters.

All power saws and cross cut saws used in construction of a building shall be deemed as carpenter tools, all men using power tools shall be journeymen carpenters, and shall receive not less than 12½ per hour more than the scale.

All carpenters shall go on job with tools sharp and be allowed to keep them sharpened on the job.

SECTION IV

"A"—Pay Day shall be weekly, all men to receive their pay in cash on the job, before the regular quitting time Friday. They shall be paid time and one-half for all time kept waiting past the regular quitting time.

"B"—All members laid off shall be paid in full when laid off or paid double time for waiting. Men quitting to wait until regular pay day for their money.

"C"—No member shall work after the regular weekly Pay Day without all men on the job having received their regular weekly pay.

SECTION V

"A"—All members shall carry the current quarterly working card and must produce same when requested by Business Agent or any one holding similar card.

"B"—Any member refusing to supply the Business Representative or Steward with his correct name and address, and the number of his Local, when requested to do so; or working without card for presentation when demanded, shall not be allowed to work until such time as he has his card.

"C"—None but the card for the current quarter will be recognized after the first quarterly meeting of a member's Local.

"D"—No financial sect. or Business Agent shall issue a work card until the current month's dues are paid.

SECTION VI

"A"—The first man on the job shall act as Steward until the Business Agent appoints a permanent Steward; he must be a member in good standing in any Local affiliated with this District Council, one year, and be fully familiar with the Working Rules. In no case shall the foreman act as Steward.

"B"—If the Steward quits or is laid off for any reason, the remaining members shall immediately elect another Steward.

"C"—It shall be the duty of the Steward to examine the card or permit of every carpenter before he begins work, and in no case shall a carpenter begin work without a card or permit.

"D"—The Steward must examine the card or permit each Monday, or as the men go on the job.

"E"—A Steward shall be fined for failure to comply with this section.

"F"—A Steward must not call men off the job without authority of the Business Representative.

"G"—Any member going on a new job shall present his card or permit to the Steward for examination before going to work. For failure to comply with this, the member shall be fined upon the report of the Steward to the District Council.

"H"—The Steward shall secure report blanks from the office of the Business Representative and see that all men sign Steward's report each week. No Steward shall be laid off without first consulting the Business Agent.

"I"—In no case shall a man working on an initiation permit be allowed to work be-

yond Friday, 5:00 P.M. without securing a new permit from the Business Representative, no initiation permit to be for more than one week.

"J"—In no case shall a member or Steward be discharged for upholding the working rules of this district. Should such happen, the Business Representative shall immediately take such matter up with the employer in order to reach a settlement of the difficulty before removing the other carpenters from the work.

"K"—The Steward shall care for any injured brother and care for his tools and deliver them to the office of the Local, any loss of time incurred in this care of member or tools to be paid by the Local of which the brother is a member.

"L"—There shall be a safe and suitable place on all jobs for members' tools.

"M"—Ice water shall be furnished by the contractor and/or employer from April first through October thirty-first.

"N"—A member working on a free permit shall pay one month's dues per day for each day he works. This money to apply on his arrearage.

"O"—The first man on job, must report new job to Business Agent within twenty-four hours.

SECTION VII

"A"—Wood-working shops, mills, or factories, installing work in the district with Union men may send one man from the mill, shop or factory. This man may be sent as foreman if the shop, mill, or factory sees fit, but this man must be a member of the

SECTION VII

"B"—No member shall set or erect any Millwork, Fixtures, or any other prefabricated part of a building that is deemed Carpentry, unless that said millwork, fixtures, or prefabricated parts are built or prefabricated by members of the UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA.

United Brotherhood of Carpenters and Joiners of America.

SECTION VIII

"A"—No member shall be allowed to work on a non-union job, or with a non-union carpenter, or with a member who has been suspended or against whom a fine is pending. or for a contractor who employs non-union carpenters. No contractor shall be allowed to work on any job unless he works one or more union carpenters on the job.

"B"—No member shall be allowed to work for less than the minimum scale of wages, or rebate to his employer in any manner.

"C"—Any Foreman, or other member, who shall attempt to hire or pay a member less than the regular rate of wages shall have charges preferred against him.

"D"—No member shall be allowed to work on a job where laborers are permitted to use carpenters' tools of any kind.

"E"—No Foreman shall permit laborers to use carpenters' tools of any kind.

"F"—It shall be a violation for any member to refuse to stop work when requested to do so by the Business Agent, or obstruct him in the lawful discharge of his duties; or carry news to his employer or superintendent of job; or make statements regarding the pay of members or scale or wages, unless he has positive evidence of the fact.

SECTION IX

"A"—Any employer or foreman discharging or laying off men, shall notify men on or before quitting time, to avoid needless

coming to the job next morning. For failure to so notify men four hours' pay shall be charged.

SECTION X

"A"—It shall be the duty of any member who has good reasons to believe, or knows of any member violating these laws, to prefer charges against said member in the District Council.

"B"—All charges of violation of any of the trade rules of this district shall be tried by a Trial Board elected by the District Council.

SECTION XI

"A"—No member shall refuse to give the actual condition on the job when requested to do so by the Business Agent, or show his pay envelope to any member requesting same.

SECTION XII

"A"—Nothing in these rules shall interfere with the rights of the employer to discharge any man for incompetency.

BY-LAWS

SECTION I

"A"—This organization shall be known as "The Jefferson County and Vicinity District Council," United Brotherhood of Carpenters and Joiners of America.

"B"—When the name "Council" or "District Council" appears herein it shall refer to "The Jefferson County and Vicinity District Council."

"C"—"The Jefferson County and Vicinity Carpenters District Council" is composed of regularly elected delegates from all locals affiliated with this Council in this vicinity.

"D"—All delegates to the Council must be journeymen carpenters working at the trade and must be members of the Local Union one year, unless the Local Union is not one year old.

"E"—Each Local Union shall have three delegates for the first one hundred members or less, and one additional delegate for each one hundred members or fractional part thereof.

"F"—The Council shall be the executive head of all member Locals in the County. It shall settle all matters pertaining to the trade. Details under this head will be found in the working rules and By-Laws.

"G"—The District Council or its attorney shall represent all members of the United Brotherhood affiliated with this Council in all matters arising through this affiliation, in the courts.

"H"—This Council shall be empowered to levy assessments in conformity with the General Constitution, upon the different Lo-

cal Unions under its jurisdiction and force their collection.

"I"—Regular meetings of the Council shall be held each 2 weeks. A special meeting may be called by the President any time he deems necessary. A quorum shall consist of a majority of delegates from all locals represented.

"J"—Time of meeting shall be 7:30 P.M.

SECTION II

"A"—The revenue of this Council shall consist of a card tax of 50c each month for each member in good standing; 50% of all initiation fees collected by the local unions, all fines levied by the Council and work permit fees.

"B"—The officers of the Council shall be the same as provided for Local Unions by the General Constitution. The officers are to be elected the first meeting night in July, and serve until their successors are chosen.

"C"—The duties of the officers shall be as per the General Constitution, the Secretary to furnish a copy of the minutes of each meeting to each local union affiliated.

"D"—All checks issued by the Council must be signed by the President, Secretary, and Treasurer.

"E"—The trustees, upon being installed, shall elect a chairman and otherwise comply with the General Constitution.

SECTION III

"A"—The initiation fees for the Council shall be as follows:

Initiations for Beneficial members shall be $50.00.

Ex-members to pay $5.00 re-admission fee.

"B"—The initiation fee of this District Council shall be $50.00. One-third down and $3.00 per day for each day worked.

Honorary members shall pay the Constitutionally fee of $10.00, $5.00 down and $1.00 per day for each day worked.

Apprentices' initiation fee shall be $10.00, $5.00 down and $1.00 per day for each day worked.

"C"—Dues for beneficial members shall be $1.50 per month; apprentices, $1.25; honorary and special card members to pay 75c per month working privileges.

"D"—There shall be a working card, marked "Special," issued to honorary or disabled members and apprentices.

"E"—When a member presents his clearance card to an authorized representative of the Local Union or District Council and same is found to be correct and he has deposited same, and if he desires to go to work he should be allowed to do so, and then required to be present at the next meeting of the local union when action shall be taken upon his clearance card. Any member who does not wish to transfer his membership shall present his due-book to the Business Agent upon arrival and await the action of the Local Union before going to work. Said member must have his due-book paid up to date and must pay a sum equal to our monthly dues, together with any assessment that may be levied while here, and otherwise comply with the General Constitution.

"F"—Any Foreman coming into the district for an out-of-town contractor must present his due-book to the Business Agent

upon arrival and may be issued a permit to start work immediately, pending action of the Local Union if his due-book shows to be paid up to date, and be approved by the Business Agent before going to work.

"G"—Any member desiring to go to work before the regular meeting night of the Local Union shall pay $1.50 working privileges to the District Council. The money shall accrue to the Council.

"H"—No contractor will be allowed to work an out of town man until approved by the Business Agent.

SECTION IV

"A"—The District Council shall employ a Business Agent. Each Local Union may nominate one candidate, who must have been a member in good standing in his Local Union one year prior to nomination, except when the Local Union is not one year old.

"B"—The salary of the Business Agent shall be set prior to nomination.

"C"—The Business Agent shall be nominated at a called meeting on the first regular meeting night in November. These nominations shall be sent to the District Council not later than the next regular meeting of the District Council following the nomination.

The ballot shall be prepared by the District Council and sent to each Local Union. The Business Agent shall then be elected at a called meeting on the first regular meeting night in December. The election returns to be sent to the District Council immediately for tabulation, not later than the first regular meeting of the District Council following election. The Business Agent, after being

declared elected by the count of the votes by the District Council, shall begin his duties on January 1st following election.

SECTION V

"A"—The Business Agent shall issue all applications for membership and deliver same, together with the money collected, to the Local Union the candidate wishes to join. He shall not in any way undertake to influence any candidate in his choice of the Local he shall join.

He shall issue all working permits according to the General Constitution and the working rules of the Council.

He shall take all his instructions from the Council.

"B"—He shall visit all non-union jobs and strive to organize all carpenters thereon at all times and places in the county, and include in his report all non-union jobs visited; where located; the name of the owner and contractor; and probable cost of the building.

He shall endeavor to find out all contemplated building, and see owner in regard to having same done by Union men, and a Union clause inserted in the contract.

"C"—The Business Agent shall endeavor to effect a settlement of all disputes that may arise on any job, and, if necessary, call a meeting of the District Council, if practical, to assist him with same. In case it is not practical for the District Council to meet he shall visit each member of the Council and secure his written opinion on the subject involved, and act accordingly.

He shall in no case refer any matter to the

General Office without the consent of the District Council. This applies to all officers and members.

"D"—The Business Agent may be removed from office at any time upon a ⅔ majority vote of the Council for incompetency or neglect of duty; charges specifying same to be presented to the Council, in writing, by the member knowing of same.

"E"—Member filing charges shall present proof to the District Council. Idle gossip will not be tolerated.

"F"—The District Council shall have power to employ an assistant Business Agent or organizer at any time conditions justify.

"G"—The Business Agent or his office attendant shall collect no dues.

SECTION VI

"A"—The Business Agent shall furnish each Local Union a written itemized statement of his work each week.

SECTION VII

"A"—An examining board to consist of three members shall be elected from the members of the Council who shall meet at a stated time and all applicants shall appear before, and be passed by them before being admitted into any local affiliated with this Council. For their services the applicant shall pay to the Business Agent the sum of $1.50 to be pro rated among the members of the board who are the examiners.

"B"—Any candidate who fails to pay up his initiation fee within sixty calendar days after date of first payment on application

forfeits the money he has paid in, without reasonable excuse, and shall be admitted only on new application.

"C"—These working rules and by-laws can be amended at any time, but must have the consent of two Local Unions affiliated with the District Council, before the amendment will be considered.

"D"—Any member who is in arrears can secure a permit from the Business Agent, but will be charged 50c for each permit after the first one. This is in addition to the $1.50 per day that applies to his dues.

"E"—Any member who has been on the job one week or more, must be given two (2) hours' notice of discharge to get his tools together and sharpened. For failure to so notify he shall receive one hours' pay.

"F"—Any member working in stained or dipped (wet) material must receive $1.00 per day extra.

SECTION VIII

"A"—Any violation of these laws and working rules shall, upon conviction, be fined automatically:

First offense—$15

Second offense—$25.00

Third offense—$50 and suspended for six months.

206

Adopted at a meeting of the Jefferson County and Vicinity Carpenters District Council, Sept. 3, 1941. Effective Jan. 1, 1942.

Committee:

R. G. ANDERSON, No. 103

J. W. WOODYARD, No. 1105

ALLISON LOCHAMY, No. 520

M. I. GARVIN, No. 1955

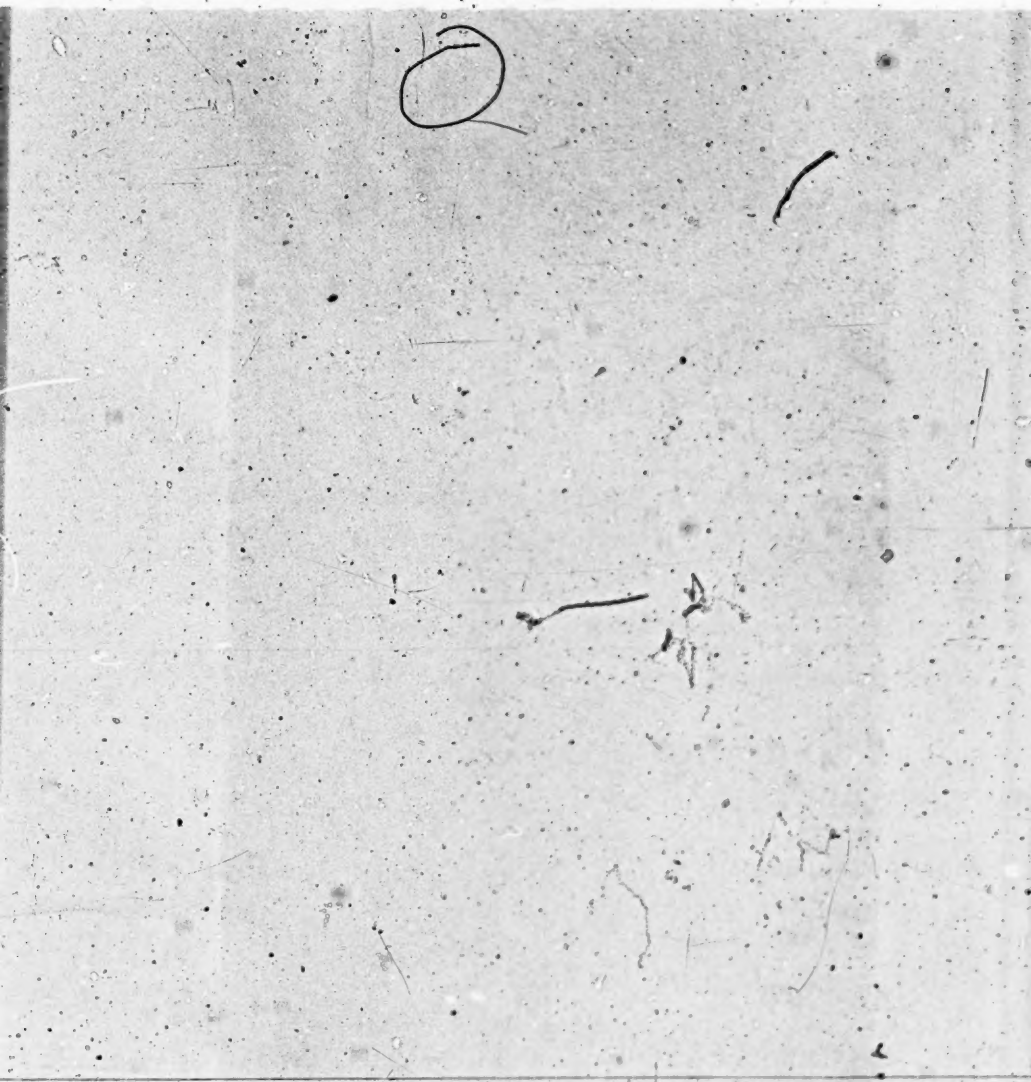
B. E. JONES, No. 103

Approved by:

M. A. HUTCHESON,

First General Vice-President.

August 26, 1941.



[fols. 147-184] EXHIBIT D

Affidavit of William Green omitted. Printed side page 227 infra.

[fol. 185] IN CIRCUIT COURT OF JEFFERSON COUNTY

ANSWER—Filed Oct. 13, 1943

Come the defendants, separately and severally, and without waiving the separate motions to strike the affidavits of William Green, Sam Roper and W. O. Hare but insisting on same, for plea and answer to the substituted petition of the plaintiffs and to each paragraph thereof, separately and severally, and to each count thereof, separately and severally, as heretofore amended by the plaintiffs, and say that:

1. Said defendant is not guilty of the things and matters therein charged.

2. The averments thereof are untrue.

3. Said defendant is not advised as to the truth or not of the facts averred in paragraph 1 of the petition for a declaratory judgment; therefore, he denies the allegations of said paragraph 1 of the petition for a declaratory judgment and demands strict and legal proof of the same.

4. Said defendant is not advised as to the truth or not of the facts averred in paragraph 2 of the petition for a declaratory judgment; therefore, he denies the allegations of said paragraph 2 of the petition for a declaratory judgment and demands strict and legal proof of the same.

5. Defendant specifically answering paragraph 2-a, says that he is not advised as to the truth or not of the facts averred in said paragrpah 2-a of petition for a declaratory judgment; therefore, he denies the allegations of said paragraph 2-a of the petition for a declaratory judgment and demands strict and legal proof of the same.

6. Defendant specifically answering paragraph 2-b of the petition for a declaratory judgment, says that he is not advised as to the truth or not — the facts averred in said paragraph 2-b of the petition for a declaratory judgment; there-

fore, denies the allegations of said paragraph 2-b of the petition for a declaratory judgment and demands strict and legal proof of the same.

[fol. 186] 7. Defendant, specifically answering paragraph 2-c of the petition for a declaratory judgment, states that he is not advised as to the truth or not of the allegations of paragraph 2-c, and therefore denies the allegations thereof and demands strict and legal proof of the same.

8. Said defendant is not advised as to the truth or not of the facts averred in paragraph 3 of the petition for a declaratory judgment; therefore, he denies the allegations of said paragraph 3 of the petition for a declaratory judgment and demands strict and legal proof of the same.

9. Said defendant is not advised as to the truth or not of the facts averred in paragraph 4 of the petition for a declaratory judgment; therefore, he denies the allegations of said paragraph 4 of the petition for a declaratory judgment; and demands strict and legal proof of the same.

10. For answer to paragraph 5 of the original petition for a declaratory judgment, said defendant states that the Legislature of Alabama, in the 1943 session, did lawfully pass the Bill known as No. 298 and which is generally referred to as the Bradford bill and the title of which is as set out in said paragraph 5 of the plaintiff's petition. Said defendant states that the official record shows that the Governor approved said Act on July 29, 1943.

11. Answering paragraph 6 of said petition for a declaratory judgment, said defendant states that he is informed and believes that the said Act No. 298, known as the Bradford Act, is not in violation of the Constitution of the United States nor of the Constitution of Alabama, and that the said statute is a valid, constitutional enactment by the Legislature of the sovereign State of Alabama.

12. Further answering paragraph 6-(a) of the petition, the defendant denies that Section 1, Article 1 of the Constitution of Alabama is violated by said Act No. 298, known as the Bradford Act, as alleged under subsection (a) of said paragraph 6.

13. Further answering paragraph 6-(b) of the petition, the defendant denies that Section 4, Article 1, of the con-

stitution of Alabama is violated by said Act No. 298, known as the Bradford Act, as alleged under subsection (b) of said paragraph 6.

14. Further answering paragraph 6-(c) of the petition, said defendant denies that Section 5, Article 1, of the Con- [fol. 187] stitution of Alabama is violated by said Act No. 298, known as the Bradford Act, as alleged under subsection (c) of said paragraph 6.

15. Further answering paragraph 6-(d) of the petition, said defendant denies that Section 6, Article 1, of the Constitution of Alabama is violated by said Act No. 298, known as the Bradford Act, as alleged under subsection (d) of said paragraph 6.

16. Further answering paragraph 6-(e) of the petition, said defendant denies that Section 35, Article 1, of the Constitution of Alabama is violated by said Act No. 298, known as the Bradford Act, as alleged under subsection (e) of said paragraph 6.

17. Further answering paragraph 6-(f) of the petition, said defendant denies that Section 45, Article IV of the Constitution of Alabama is violated by said Act No. 298, known as the Bradford Act, as alleged under subsection (f) of said paragraph 6.

18. Said defendant denies that the first amendment to the Constitution of the United States of America is violated by said Act No. 298, known as the Bradford Act, as charged in subsection (aa) of paragraph 6 with reference to the alleged violation of the Constitution of the United States

19. Said defendant denies that the Fourteenth Amendment to the Constitution of the United States of America is violated by Act. No. 298, known as the Bradford Act, as charged in subsection (bb) of paragraph 6 with reference to the alleged violation of the Constitution of the United States.

20. Said defendant denies that Article I, Section 8, of the Constitution of the United States of America is violated by said Act No. 298 known as the Bradford Act charged in subsection (cc) of paragraph 6 with reference to the alleged violation of the Constitution of the United States.

21. Said defendant denies that Article I, Section 10 of the Constitution of the United States of America is violated by said Act No. 298, known as the Bradford Act, as charged in subsection (dd) of paragraph 6 with reference to the alleged violation of the Constitution of the United States.

22. Said defendant denies that Article IV of the Constitution of the United States of America is violated by the said Act No. 298 known as the Bradford Act, as charged in subsection (ee) of paragraph 6 with reference to the violation of the alleged Constitution of the United States.

[fol. 188] 23. Said defendant denies that Amendment 9 of the Constitution of the United States of America is violated by the said Act No. 298, known as the Bradford Act, as charged in subsection (ff) of paragraph 6 with reference to the violation of the alleged Constitution of the United States.

24. Said defendant denies that Amendment Thirteen of the Constitution of the United States of America is violated by the said Act of 298, known as the Bradford Act, as charged in subsection (gg) of paragraph 6 with reference to the violation of the alleged Constitution of the United States.

25. Said defendant denies that Amendment Four of the Constitution of the United States of America is violated by the said Act No. 298, known as the Bradford Act, as charged in subsection (hh) of paragraph 6, with reference to the violation of the alleged Constitution of the United States.

26. Said defendant denies that Amendment Five of the Constitution of the United States of America is violated by the said Act No. 298, known as the Bradford Act, as charged in subsection (ii) of paragraph 6, with reference to the violation of the alleged Constitution of the United States.

27. Said defendant denies that Amendment Six of the Constitution of the United States of America is violated by the said Act No. 298, known as the Bradford Act, as charged in subsection (jj) of paragraph 6, with reference to the alleged violation of the Constitution of the United States.

28. Further answering the second paragraph of Section 6-(jj), defendant categorically denies each of the averments of fact and each of the conclusions of law therein contained.

29. Further answering said paragraph 6-(k) of the petition for a declaratory judgment, wherein the plaintiffs allege that Act No. 298, known as the Bradford Act, is void and unconstitutional for the reasons set forth in subsection (k), said defendant says that said Act No. 298 is not unconstitutional and does not violate the constitutional provisions regulating interstate commerce.

30. Further answering paragraph 6-(l) of the petition for a declaratory judgment, wherein the plaintiffs allege that said Act No. 298, known as the Bradford Act, is void and unconstitutional for the reasons set forth in subsection (l), said defendant says that said Bradford Act, known as [fol. 189] Act No. 298, does not violate Article I, Section 10, and Section 1 of the Fourteenth Amendment to the Constitution of the United States and that the provisions of said Act No. 298, known as the Bradford Act, do not impair, interfere with or modify the obligation of contract, nor interfere with nor intrude upon the rights, privileges and immunities and properties of the plaintiffs or any one of them.

31. Further answering said paragraph 6-(m) of the petition for a declaratory judgment, wherein the plaintiffs alleged that said Act No. 298, known as the Bradford Act, is void and unconstitutional for the reasons set forth in subsection (m), said defendant says that said Act No. 298, known as the Bradford Act, does not violate Article VI of the Constitution of the United States, nor is it in conflict with the provisions of the National Labor Relations Act, Title 29, Sections 151 to 166 of the United States Code annotated, in that the National Labor Relations Act has its province and the said Act No. 298, known as the Bradford Act, has its province and scope of application under the Constitution and laws of the United States of America and of the State of Alabama.

32. Further answering said paragraph 6-(n) of the petition for a declaratory judgment, wherein the plaintiffs allege that said Act No. 298, known as the Bradford Act, is void and unconstitutional for the reasons set forth in subsection (n), defendant says that said Act No. 298, known as the Bradford Act, does not violate the provisions of, nor is it in conflict with the provisions of the Thirteenth Amendment to the Constitution of the United States in that there

is no slavery or involuntary servitude created or attempted to be created by the enactment of said Act.

33. Further answering said paragraph 6-(o) of the petition for a declaratory judgment, wherein the plaintiffs allege that said Act No. 298, known as the Bradford Act, is void and unconstitutional for the reasons set forth in subsection (o), said defendant says that said Act No. 298, known as the Bradford Act, does not violate the Fourteenth Amendment to the Federal Constitution of the United States which prohibits passing a law by any state depriving any person of liberty or property without due process of law, and the defendant says that the right of free speech, the freedom of the press and the right to peacefully assemble have not been violated by the enactment nor will they be impaired by the enforcement of the said Act No. 298, known as the Bradford Act.

[fol. 190] 34. Further answering paragraph 6 (A) of the petition for a declaratory judgment, said defendant denies that the said Act No. 298, known as the Bradford Act, of Section 13 thereof, illegally, or unreasonably or unconstitutionally does the things or any of the things charged by the plaintiffs in said subsection (A) of the petition for a declaratory judgment.

35. Further answering paragraph 6 (B) of the petition for a declaratory judgment, said defendant denies that the said Act No. 298, known as the Bradford Act, as a whole or Section 7 thereof separately, illegally, or unreasonably or unconstitutionally does the things or any of the things charged by the plaintiffs in said subsection (B) of the petition for a declaratory judgment.

36. Further answering paragraph 6 (C) of the petition for a declaratory judgment, said defendant denies that the said Act No. 298, known as the Bradford Act, or any Section thereof, illegally, or unreasonably or unconstitutionally does the things or any of the things charged by the plaintiffs in said subsection (C) of the petition for a declaratory judgment.

37. Further answering paragraph 6 (D) of the petition for a declaratory judgment, said defendant denies that the said Act No. 298, known as the Bradford Act, illegally, or unreasonably or unconstitutionally does the things or any

of the things charged by the plaintiffs in said subsection (D) of the petition for a declaratory judgment.

Said defendant further says that said Act No. 298, known as the Bradford Act, does not deprive the plaintiffs of liberty and property without due process of law and does not deny the equal protection of the law contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States and that the provisions of said statute eliminating from the effect of said statute those labor unions and organizations already subject to the Railway Labor Act, are reasonable and proper and legal exceptions or exemptions and are in no wise unlawful or unconstitutional.

38. Further answering Paragraph 6 (E) of the petition for a declaratory judgment, wherein the plaintiffs allege that said Act No. 298, known as the Bradford Act, or specifically section 7 thereof, is void and unconstitutional, said defendant further says that the provisions of said Act No. [fol. 191] 298, known as the Bradford Act, and Section 7 thereof, are a reasonable, legal and constitutional exercise of the sovereign power of the State of Alabama, exercised by it in its sovereign capacity and within the constitutional police power of the said State of Alabama.

39. Further answering paragraph 6 (F) of the petition for a declaratory judgment, said defendant states that said Act No. 298, known as the Bradford Act, does not place upon the plaintiffs or any Labor union or organization any requirement that they incorporate or assume the status of a corporation or that they have imposed upon them any duties or obligations of a corporation as such, and defendant specifically denies the averments of said — 6 (F).

40. Further answering said subsection 6 (G) of the petition for a declaratory judgment, said defendant says that the said Act No. 298, known as the Bradford Act, is not unreasonable and arbitrary nor discriminatory in its provision having to do with regulation of labor organizations and associations and the members thereof. Said defendant further states that said Act No. 298, known as the Bradford Act, is a lawful and legal exercise of the sovereign police power of the State of Alabama.

Further answering said paragraph 6 (G) of the petition for a declaratory judgment, said defendant states that the Legislature of Alabama had the power and right to deter-

mine what the public interest of Alabama required in the way of legislation and the provisions of the said Act No. 298, known as the Bradford Act, speak for themselves as to whether or not they are desirable and in the public interest.

41. Further answering said subsection 6 (H) of said petition for a declaratory judgment, defendant says that he has not threatened the rights, liberty and pursuit of happiness of anyone of plaintiffs and that he has not since the enactment of said law and up to the time of the filing of this answer, made any threat nor taken any action under the said Act No. 298, known as the Bradford Act, and that he has not in an official capacity, as a constitutional officer, taken any steps in law or in fact to enforce any of the provisions of said Act No. 298, known as the Bradford Act, against the plaintiffs or any one of them.

42. Further answering said subsection 6 (I) of said petition for a declaratory judgment, said defendant says that he is not advised as to the difficulties of the said plaintiff, [fol. 192] B. E. Jones, or as to the intentions of the said B. E. Jones, as set out in said paragraph 6 (I), and not being advised except by said statement as hearsay, said defendant denies the said allegations as to the questions confronting the said B. E. Jones and the intentions of the said B. E. Jones.

43. Further answering said subsection 6 (J) of the said petition for a declaratory judgment, said defendant says that he is not advised as to the allegations as to strikes in the past having been called for lawful purposes when said strikes were not called by a majority of the employees regularly employed in the business. Said defendant further says that he is not advised as to the purposes and intentions of Local No. 103, except as alleged in said paragraph 6 (J) of the said petition for a declaratory judgment, and not being advised except by hearsay as to said facts so alleged and as to the said purposes and intentions of said Local No. 103, and the other parties plaintiff with reference to strikes and with reference to executive, administrative, professional and supervisory employees, said defendant denies the statements and allegations made with reference thereto and requires strict and legal proof of the same.

44. Answering paragraph 6 (K) of the said petition, defendant says that he is not advised of the truth vel non

of the facts therein alleged and he therefore denies the averments of facts and the conclusions of law therein contained, separately and severally.

45. Further answering said subsection 6 (L) of the said petition for a declaratory judgment, said defendant says that he is not advised of the truth of the allegation with reference to each of the plaintiff organizations and their mutual interests, except as set forth in said paragraph 6 (L) of the petition for a declaratory judgment and not being advised except by the hearsay and ex parte statement made in said paragraph 6 (L) of the said petition for a declaratory judgment, said defendant denies the allegations there made and demands strict and legal proof thereof.

46. Said defendant, answering paragraph 7 of the petition for a declaratory judgment, says that said Section 7 of the Bradford Act speaks for itself. Said defendant further states that said Section 7 is not in violation of or contrary to the Constitution of Alabama or the Constitution of the United States of America. As to what the plaintiffs propose to do or will do, defendant says that he is not in- [fol. 193] formed other than as alleged in said paragraph 7 of said petition for a declaratory judgment, and he demands strict proof of same.

47. Answering paragraph 8 of the petition for a declaratory judgment, this defendant says that Section 12 of Act No. 298, known as the Bradford Act, speaks for itself and further says that Section 12 is a valid and constitutional provision and that the allegation that B. E. Jones has refused and is refusing to handle, use or work on any material, equipment or supplies that were not produced, processed or delivered by a labor organization and will continue to do so, is a hearsay statement and not known by the defendant to be true except in so far as the same is alleged in said complaint. Defendant, therefore, denies the allegation of the said paragraph 8 of the said petition for a declaratory judgment and demands strict and legal proof of the same.

48. Answering paragraph 9 of the petition for a declaratory judgment, this defendant says that the provisions of Section 13 of said Act No. 298, known as the Bradford Act, speak for themselves and the defendant says that said Section 13 is not unconstitutional and is a valid statute of the sovereign State of Alabama. Said defendant has no

knowledge other than hearsay knowledge contained in the petition for a declaratory judgment in this cause as to what Local No. 103 is about to do or will do with reference to a strike and with reference to any vote by certain employees and with reference to the intentions of the employees working in such business or plant; and not being advised except by hearsay of the intentions and purposes and acts of said Local No. 103, as declared in said paragraph 9 of the petition for a declaratory judgment, this defendant denies the allegations of the said paragraph 9 and demands strict and legal proof of the things and matters therein alleged to be true.

49. Further answering paragraph 10 in the petition for a declaratory judgment, defendant says that Section 15 of said Act No. 298, known as the Bradford Act, speaks for itself as to the provisions of said Section 15. Said defendant denies that said Section 15 of said Act is unconstitutional and says that until said Section 15 is declared not to be constitutional by a Court with authority to so declare, this defendant will continue to deny that the same is unconstitutional. This defendant further states that with reference to the averments in said paragraph 10 in petition for a declaratory judgment, as to Local No. 103, and its

[fol. 194] affiliation with an international organization and with respect to its alleged written contracts with employers in Jefferson County, Alabama, in force and effect prior to the passage of said Act No. 298, known as the Bradford Act, which alleged contracts are said to be now in force and effect and with further reference to the existence of said contracts as set out at length in said paragraph 10 of the said petition for a declaratory judgment, this defendant says that he is not advised, and not being advised of the facts, this defendant denies said allegations and demands strict and legal proof of the material allegations in said paragraph 10 contained.

50. Said defendant, in answer to paragraph 11 of the petition for a declaratory judgment, says that said Section 16 of the Bradford Act speaks for itself. Said defendant further states that said Section 16 is not in violation of or contrary to the Constitution of Alabama or the Constitution of the United States of America. As to what the plaintiffs propose to do or will do, defendant says

that he is not informed other than as alleged in said paragraph 11 of said petition for a declaratory judgment, and denies the averments thereof.

51. Answering paragraph 12 of the petition for a declaratory judgment, this defendant says that the provisions of Section 17 of said Act No. 298, known as the Bradford Act, speak for themselves and this defendant denies that the provisions of Section 17 are unconstitutional, null and void and of no effect. This defendant further states that he is not advised as to the voluntary financial contributions to the democratic party and to candidates of its choice in the past nor of what it is about to make or will voluntarily make in the way of financial contrib-tions. Therefore, this defendant denies the material allegations of said paragraph 12 of the petition for a declaratory judgment and demands strict and legal proof of all of said material allegations.

52. Said defendant, answering paragraph 13 of said petition for a declaratory judgment, denies that as between the said defendant and said plaintiff or plaintiffs there is at the time of the filing of this answer, or that there was at the time intervening the filing of said petition and the filing of this answer, a subsisting actual controversy upon which or as to which substantial personal or property rights are or were depending; and defendant says that [fol. 195] there is not presented by the allegations of the said petition for a declaratory judgment any controversy which could be heard in this Court and as to which the matter attempted to be presented could or might be res judicata. Said defendant denies that there is any "*justiciable*" issue as alleged or any justiciable issue in said paragraph 13 of the petition for a declaratory judgment or any justiciable issue between said defendant and said plaintiff or plaintiffs.

53. Answering paragraph 14 of the said petition for a declaratory judgment, defendant says that Section 18 of the said Act No. 298, known as the Bradford Act, speaks its own content and is part of the law of the State of Alabama. Said defendant states that he has not at any time since the enactment of the Bradford Bill, known as Act No. 298, received or issued any warrant, filed any complaint or proceedings, made any arrest, preferred any charges,

presented any matter to the grand jury or caused any indictments to be made, commenced any prosecution, or done any other thing or act generally or specifically in the enforcement of said Bradford Act or any part thereof.

54. Answering paragraph 15 of the petition for a declaratory judgment, defendant says that he is not advised as to the truth of the allegations made in said paragraph 15 and not being advised of the correctness or not thereof, specifically denies same and demands strict and legal proof thereof. Defendant further says that so far as he is advised said Bradford Act is not in violation of any sovereign Constitution.

55. Answering paragraph 16 of the petition for a declaratory judgment, said defendant says that he is not advised of the truth or not of the facts stated in particular in said paragraph 16, therefore, he denies the same, and demands strict and legal proof thereof.

56. Answering paragraph 17 of the petition for a declaratory judgment, said defendant says that he is not advised of the truth or not of the facts stated in particular in said paragraph 17, therefore, he denies the same, and demands strict and legal proof thereof.

57. Answering paragraph 18 of the petition for a declaratory judgment, said defendant says that he is not advised of the truth or not of the facts stated in particular in said paragraph 18, therefore denies the same, and demands strict and legal proof thereof.

58. Answering paragraph 19 of the petition for a declaratory judgment, said defendant says that he is not advised [fol. 196] of the truth or not of the facts stated in particular in said paragraph 19, therefore denies the same, and demands strict and legal proof thereof.

59. Answering paragraph 20 of the petition for a declaratory judgment, said defendant says that he is not advised of the truth or not of the facts stated in particular in said paragraph 20, therefore denies the same, and demands strict and legal proof thereof.

60. The defendants deny the allegations and conclusions contained in Paragraph 21 of the petition.

61. For answer to Paragraph 22 of the petition defendants say that they are not sufficiently advised as to the truth

or not of the facts alleged therein to either admit or deny such allegations of fact; and defendants deny the conclusions of law alleged in said paragraph 22 of the petition.

Respectfully submitted, Wm. N. McQueen, Acting Attorney General, D. S. Satterwhite, Evans Dunn, John L. Adams, W. H. Brantley, Jr., James A. Simpson, John W. Lapsley, Attorneys for Defendant.

IN CIRCUIT COURT OF JEFFERSON COUNTY

MINUTE ENTRY RE PLEADINGS AND TRIAL

On this the 17th day of August, 1943, came the parties by their attorneys, and all parties appear in open Court and agree that this action and all phases and aspects thereof and proceedings therein shall be heard by a three-judge court composed of Judges McElroy, Windham and Morrow, and in the event of a failure of all three of said judges to agree upon any ruling or decision, the ruling and decision of any two of said judges shall be and constitute the ruling and decision of the Court; plaintiffs file substituted petition and withdraw the original petition filed in this action; defendants file a document entitled "Plea in Abatement to the Petition as Amended"; plaintiffs move the Court to strike said Plea in Abatement, and said motion is by the Court heard and considered, whereupon,

[fol. 197] It is ordered and adjudged by the Court that said motion be and the same is hereby granted and said Plea in Abatement ordered stricken and each defendant, separately and severally excepts; defendants, by separate paper this day filed, move the Court to strike the American Federation of Labor and the Alabama State Federation of Labor, separately as parties plaintiff, and said motion are by the Court heard and considered, whereupon,

It is ordered and adjudged by the Court that each of said motions be and the same is hereby overruled, and each of the defendants, separately and severally reserves an exception; defendants file demurrer and amendment to demurrer to the substituted petition and to each paragraph and aspect thereof, separately and severally, and said demurrer is argued and submitted to the Court and taken under advisement.

On this the 13th day of October, 1943, came the parties by their attorneys, and each defendant files a motion to strike the affidavit of W. O. Hare, Sam Roper and William Green, attached to the substituted petition, separately and severally, and said motions are by the Court heard and considered, whereupon,

It is ordered and adjudged by the Court that each of said motions be and the same is hereby overruled and each of the defendants except; the court rules that said affidavits are not to be considered as evidence in this action.

October 13, 1943, this cause coming on to be heard was submitted upon the demurrer, the additional demurrer and the amended demurrer to the substituted petition and same being considered and understood by the Court, it is ordered and adjudged by the Court that all of said demurrers, both as respects the substituted petition as a whole and as respects the several and various aspects thereof, separately and severally, be and the same are hereby overruled; it is further ordered the defendants be and they are hereby allowed to and including the 25th day of November, 1943, in which to file their answer to the substituted petition.

In making the above and foregoing ruling upon the demurrers the Court does not finally determine that all of the matters in the substituted petition upon which declarations are sought are appropriate to be declared upon, even if the averments of the substituted petition are not denied or are found to be true. The Court considers that a final determination of what matters should be declared upon can only [fol. 198] be made appropriately when submission has been made for final judgment. Defendants file answer to substituted petition.

McElroy, Windham, Morrow, Circuit Judges.

In Circuit Court of Jefferson County

Minute Entry and Decree—Filed March 4, 1944

On this the 18th day of February, 1944, came the parties by their attorneys, and issue being joined, this case is argued and submitted to the Court and taken under advisement.

On this the 4th day of March, 1944, came the parties by their attorneys, and this case having been heretofore taken

under advisement, and the same being now fully considered and understood by the Court,

It is ordered and adjudged by the Court that judgment be and the same is hereby rendered as per separate paper this day filed in words and figures as follows, to-wit:

"IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA—LAW DIVISION

No. 8582-X

ALABAMA STATE FEDERATION OF LABOR, et al., Plaintiffs,

versus

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, et al., Defendants

This cause coming on to be heard was regularly set for hearing, heard and submitted; and said submission having been considered by the Court, it is hereby declared by the Court as follows:

1. That that certain Act of the Legislature of Alabama which was approved by the Governor of Alabama on June 29th, 1943, and which is entitled "An Act to create a Department of Labor of the State of Alabama and to provide for its personnel, powers, functions, and duties and the performance thereof, to provide for the appointment by the Governor of boards of mediation, and to provide for their personnel, powers, functions, duties, and procedure, to regulate the activities and affairs of labor organiaztions and to require reports thereby, to make unlawful interference with the right to work or with the obtaining, use, or disposition of materials, equipment, or service, to regulate the exercise of the right to strike, to prohibit the collection, receipt, or demand of money for the privilege of working, to prohibit executive, administrative, professional, or supervisory [fol. 199] employees from becoming members in certain labor organizations, to prohibit political contributions by labor organizations, to create civil liability and to establish civil and criminal penalties and remedies for the violation of this Act and to provide for the enforcement thereof, to make an appropriation for the administration of this Act, and to repeal subsection (2) of Section 3, and subsection (3) of Section 3, and Section 28 of Title 26 of the Code of Ala-

bama" (hereinafter referred to as "said Act") is not invalid *as a whole* as being in violation of Section 45 of the Constitution of Alabama. (Caveat: The declaration made above in this paragraph is not intended to constitute a declaration upon the constitutionality of any particular provision of said Act as affected by Section 45 of the Constitution of Alabama.)

2. That Section 7 of said Act is not unconstitutional by reason of or on account of any of the matters and things asserted in the substituted petition in this action.

3. That Section 12 of said Act is unconstitutional, null and void.

4. That the unconstitutionality of Section 12 of said Act does not render the whole of said Act or any other parts of said Act invalid.

5. That that part of Section 13 of said Act which reads as follows:

"No strike shall be had in any business, plant or in any unit thereof except when such strike is authorized by the vote of the majority of the regular employees working in such business, plant or in such unit thereof, expressed by a secret written ballot. Within 24 hours after the taking of such ballot, if the vote authorizes a strike, the officers or members of the labor organization conducting such ballot shall make and file with the Department of Labor a written report of such balloting showing: (1) the number of persons voting for the strike; (2) the number voting against the strike; (3) the total number of employees working in the business, plant or unit in which the strike is proposed; (4) a statement that no person not working in such business, plant or in such unit thereof cast a ballot in such vote. This report shall become a permanent public record of the Department of Labor, and if wilfully false, the person or persons making it shall be guilty of perjury and shall be pun-[fol. 200] ished as provided by the laws of this state for the crime of perjury. A failure to make such report within the time required shall be a misdemeanor", is unconstitutional, null and void; and that so much of section 14 of said Act as imposes a penalty for a violation of the above-quoted part of section 13 of said Act is unconstitutional, null and void.

6. That the unconstitutionality of the parts of said Act declared to be unconstitutional in and by paragraph 5, above, of this judgment, does not render the whole of said Act or any other parts of said Act invalid.

7. (a) That by reason of the fact that the petitioner B. E. Jones was a member of Local No. 103 of the United Brotherhood of Carpenters and Joiners of America at the time the said Act was approved, and continuously ever since has been a member of said Local No. 103, and by reason of the further fact the said B. E. Jones was at the time said Act was approved and has been at all times since said Act was approved the holder-owner of an insurance contract accruing under and arising out of his said membership in said Local No. 103, and by reason of the further fact that a termination of the membership of said B. E. Jones in said Local No. 103 would automatically terminate said insurance contract, and by reason of the further fact that Section 16 of said Act states that the provisions of that section should not be construed so as to interfere with or void any insurance contract in existence and force at the time of the passage of said Act—the membership of said B. E. Jones in said Local No. 103 is not violative of the provisions of Section 16 of said Act, notwithstanding the fact that the said B. E. Jones is a supervisory employee; and (b) that the future continuous membership by the said B. E. Jones in said Local No. 103 during the time that said insurance contract shall continuously remain in force and effect, will not constitute a violation of the provisions of Section 16 of said Act.

8. That Section 17 of said Act is unconstitutional, null and void.

9. That the unconstitutionality of Section 17 of said Act does not render the whole of said Act or any other parts of said Act invalid.

With respect to those aspects of the substituted petition seeking declaration that Sections 15 and 16 of said Act are [fol. 201] unconstitutional; upon and after a consideration of all of the circumstances of the submission, especially the circumstance that petitioners contend that the rules or standards contained in Section 15 or 16 are so vague and indefinite as to render the provisions of said sections uncon-

stitutional, and by reason of the further fact that the court is of the opinion that the unconstitutionality, if such there be, of either or both of Sections 15 and 16 of said Act would not invalidate the said Act as a whole, or any other parts of said Act—the Court is of the opinion that it is measurably inappropriate to make declarations in this action upon the matter of whether or not said sections are constitutional or unconstitutional. Therefore, the Court refrains from making declarations upon the matter of whether 15 and 16 are constitutional or unconstitutional.

Each party to this action excepts, separately and severally, to each and every part of this judgment which is adverse to him.

It is further considered, ordered and adjudged that the costs in this action be and the same are hereby taxed against the petitioners, for which execution may issue.

This the 4th day of March, 1944.

J. Russell McElroy, John C. Morrow, Whit Windham, Circuit Judges.

[File endorsement omitted.]

In Circuit Court of Jefferson County

Agreement to Abridge Record—Filed March 16, 1944

It is agreed that in preparing the transcript for the Supreme Court in this case, the original petition filed by the plaintiff may be omitted and the transcript start with the substituted petition.

It is further agreed that all motions, pleas, demurrers and other pleadings appearing in the case which may be addressed to the original petition or the petition as amended shall be taken and construed on appeal, as they were taken and construed in the court below, that is, as applicable to the substituted petition just the same as if they had been amended to read, plea, demurrer or motion or other pleading to the substituted petition, and that only the rulings [fols. 202-206] of the Court upon such pleadings as so considered as amended and filed or refiled to the substituted petition, shall be included in the record on appeal. This is for the purpose of obviating any technical question that might otherwise arise from an oversight to appropriat-ly

reframe amend or refile any of such pleadings so as to address to same to the substituted petition (or any portion thereof), in the event anything of that kind comes up.

Horace C. Wilkinson, Attorney for Plaintiff; Wm. N. McQueen, Attorney-General; John W. Lapsley, Attorney for the Defendants.

In Circuit Court of Jefferson County

Bill of Exceptions

Be It Remembered that the following proceedings not otherwise shown of record were had and done in this cause at the hearing thereof before Judges McElroy, Windham and Morrow in the Circuit Court of Jefferson County, Alabama, beginning on the 17th day of February, 1944.

The defendants refiled their motion to strike the affidavits of Wm. Green, Sam Roper & W. O. Hare attached to the substituted petition, which motion is in words and figures as follows: (Clerk will here copy motion.) The Court overruled said motions. Each defendant separately & severally excepted thereto.

[fol. 207] Note re Evidence Introduced

The plaintiffs introduced in evidence a written agreement to which was attached an affidavit of W. O. Hare, * * *, an affidavit of Sam Roper, an affidavit of William Green, a communication from W. Emmett Brooks, director of the Department of Labor of Alabama addressed To The Labor Union Addressed; Administrative Bulletin No. 7 of the Department of Labor of Alabama under date of January 20, 1944; Administrative Bulletin No. 1 of the Department of Labor of Alabama under date September 1, 1943; Administrative Bulletin No. 6 of the Department of Labor of Alabama under date of January 6, 1944; an affidavit of W. Emmett Brooks dated February 16, 1944; and Memorandum No. 7 of the United States Department of Labor relating to union membership and collective bargaining by foremen under date of April, 1943; and a communication from W. Emmett Brooks, director of the Department of Labor of Alabama addressed to labor organizations and labor unions existing in Alabama with reference

to Section 7 of Act No. 298 of the 1943 legislature of Alabama, known as the Bradford Act, together with Form A for annual reports by labor unions or labor organizations, and a form to be used in connection with item 7 of Form A, all of which were in words and figures as follows:

[fol. 208] [Title omitted]

AGREEMENT AS TO CERTAIN FACTS

To obviate the taking of testimony with respect to certain matters averred in the petition, as last amended, plaintiffs and defendants agree as follows:

1. The allegations in paragraphs 1, 2, 3-a, 2-b, 2-c, 3, 4 and 5 in the substituted petition, are admitted to be true.

2. The allegations in sub-paragraph (a) through sub-paragraph (c), inclusive, in paragraph 6 of the substituted petition are each denied.

3. The allegations in sub-paragraph (A) through sub-paragraph (C) in paragraph 6 of the substituted petition are each denied.

4. The allegations of sub-paragraph (H) in paragraph 6 of the substituted petition, are admitted except the averment therein that the existence of said Act threatens the rights, liberty and pursuit of happiness of the plaintiffs and is in itself a threat to and jeopardy of their constitutional rights above set out, which allegation is denied.

5. The affidavits of W. O. Hare, Sam Roper, William Green and letter of 2/14/44 of W. Emmett Brooks and administrative Bulletin No. 7 which are attached to this agreement are offered in evidence by plaintiffs along with this agreement and shall be received and considered by the Court as the testimony of each affiant with respect to the matters in his affidavit in lieu of having said witness examined about said matters in open Court, it being agreed that each affiant would testify to the matters set out in his affidavit if he were sworn and examined in open court.

6. A copy of administrative Bulletin #1 & 6 and U. S. Department of Labor Memorandum #7 and affidavit of W. Emmett Brooks, which is attached hereto, is offered in evidence by defendants and shall be received and considered by the Court as if it was the original.

7. The allegations of fact in paragraphs 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, in the substituted petition are admitted, but each conclusion of law in each of said [fol. 209] paragraphs, separately, and severally, is denied.

8. The Constitution of the American Federation of Labor, the United Brotherhood of Carpenters and Joiners of America, the Alabama State Federation of Labor and working Rules of Carpenters District Council referred to in W. O. Hare's affidavit are the same documents exhibited to the petition as amended and need not be repeated or duplicated in preparing the record in this cause.

Horace C. Wilkinson, Attorney for Plaintiffs; Wm. N. McQueen, Attorney General.

AFFIDAVIT OF W. O. HARE

STATE OF ALABAMA,
Jefferson County:

Personally appeared before me, the undersigned authority in and for said County in said State, W. O. Hare, who being duly sworn, deposes and says that he is Secretary-Treasurer of the Alabama State Federation of Labor.

Affiant further says that he has been a member of a local labor union affiliated with the Alabama State Federation of Labor for approximately thirty-seven years.

Affiant says that he has been Secretary of the Alabama State Federation of Labor for approximately twelve years and is thoroughly familiar with the affairs of the Alabama State Federation of Labor, and is familiar in a general way with the affairs of all the local unions affiliated with the Alabama State Federation of Labor, including Local Union No. 103 of the United Brotherhood of Carpenters and Joiners of America.

Affiant further says that for purposes of brevity in this affidavit the American Federation of Labor will be referred to as the A. F. of L., the United Brotherhood of Carpenters and Joiners of America will be referred to as U. B. C. J., and Local Union No. 103 of the United Brotherhood of Carpenters and Joiners of America will be referred to as Local No. 103.

At all times mentioned in the complaint the A. F. of L. was and now is a voluntary and unincorporated associa-

tion composed as numerous voluntary and unincorporated associations of labor unions known as national and international unions. Each of these national and international unions affiliated with the A. F. of L. has its own constitution. [fol. 210] Each of said organizations issues charters to its respective local unions. Each of said national and international unions and national organizing committees affiliated with the A. F. of L. is an organization of employees organized for the purpose of dealing with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment. The A. F. of L. is therefore the single national organization to which all of these various labor organizations are affiliated for the purpose of securing greater strength to all through the united effort and policies which can be established and achieved through such single national organization. Each affiliated organization of the A. F. of L. has so affiliated itself to be associated with other labor organizations so as to fully develop its own strength and achieve a high degree of organization of the workers within its jurisdiction.

The strength and interests of any one local union affiliated with any one of the national or international unions, which in turn is affiliated with the A. F. of L., depends upon the fact that there is such a national organization as the A. F. of L. unifying and cementing the activities of all the A. F. of L. organizations.

The activities of any one local union are national in character because of the impact upon its activities upon the activities of other labor organizations throughout the country, and in turn the impact of the activities of a local union upon the activities and policies of the national organization of the A. F. of L.

The A. F. of L. is governed by a written constitution, adopted by the organization in convention assembled. The last convention was held in October, 1942. The delegates to each of the national conventions of the A. F. of L. are selected by the separate affiliated organizations of the A. F. of L. There is attached and incorporated herein as "Exhibit No. 1" a copy of said constitution of the A. F. of L.

The total membership of the affiliates of the A. F. of L. throughout the States of the United States, including the State of Alabama, and Canada, exceeds five million working

men and women. The affiliated organizations of the A. F. of L. have a membership in the State of Alabama in excess of 120,000.

The A. F. of L. maintains its principal office in the City of Washington, District of Columbia.

[fol. 211] To effectuate the objectives of the A. F. of L. as set forth in its constitution, the affiliated organizations of the A. F. of L. exchange and discuss among and between themselves ideas and information relating to said objectives, and arrive at mutual and common decisions, disseminate to the public and to the workers of the nation who have not joined any affiliated organization of the A. F. of L., and to public officers and representatives of the governments of the various states, including Alabama, and of the United States, facts, information and opinions concerning the A. F. of L. and its affiliated organizations, their purposes and objectives, problems of the membership of the A. F. of L. and of the wage earners generally, the benefits of the National Labor Relations Act and other federal and state statutes and the rights guaranteed thereby and the harmful effects to organized labor of any and all legislation which is not considered beneficial to organized labor.

In this connection the A. F. of L. maintains an educational program, distributes educational material to its affiliated organizations, maintains, or co-operates in maintaining, national publications known as "Labor" and "American Federation of Labor" maintains a national legislative service by which it keeps it- affiliated organizations informed regarding federal and state legislation and proposed legislation. Considerable moneys are expended by the A. F. of L. in behalf of such activities.

The A. F. of L. makes an effort to cement the interest of organized labor and of employees in individual trades and industries for their mutual protection, to establish fraternal relations among such employees, to assure harmonious cooperative action, to protect and promote the rights, privileges and immunities of wage earners and the general welfare of labor organizations and of employees represented by their affiliated unions with any of the affiliated organizations of the A. F. of L. and of labor generally, and to enhance the dignity of labor.

To this end the locals of the various affiliated unions of the A. F. of L. located in the State of Alabama are affiliated

with a State Federation of Labor known as the Alabama State Federation of Labor. It is the purpose of unions so affiliated to aid and assist each other, to aid and encourage public support for the union members and union-made materials, to secure legislation in the interests of working [fol. 212] people, and to influence public opinion in favor of organized labor and better working and health standards and to aid and encourage the labor press of America, to establish better communication between and among the labor unions in Alabama, to secure united and harmonious action in all matters for the welfare of organized workers, to circulate labor literature, to promote economic intelligence, to make known the oponents of organized labor, and to prevent the practice of black-listing, to give scope and power to all attempts to enforce fair working conditions, to endorse or protest with regard to any policies, executive acts, or legislation wherever the interests of labor and the people in Alabama may be involved, to encourage trade union organization for the protection of the rights of wage earners, and the advancement of their special vocations, and in general to promote the greatest possible unity of all labor. There is attached and incorporated herein, as "Exhibit No. 2", a copy of the constitution of the Alabama State Federation of Labor. The labor unions affiliated with the Alabama State Federation of Labor have an aggregate membership in excess of 120,000 persons.

The complainant B. E. Jones, at all times mentioned in the complaint was and now is a member of United Brotherhood of Carpenters and Joiners of America, Local No. 103, affiliated with the said Alabama State Federation of Labor.

The National office of the A. F. of L. maintains several hundred regional organizers throughout the nation to assist in the uniform operations of the policies herein described. These organizers represent the A. F. of L. in their respective districts, assist the affiliated organizations of the A. F. of L. in their respective districts, assist in the organization of new local unions to be affiliated with one of the national or international unions affiliated with the A. F. of L., inform the local unions of the affiliated organizations of the A. F. of L. regarding A. F. of L. policies generally and as they relate to specific problems confronting said local unions, and to participate in the solution of such problems where

their assistance is sought by local unions or where the interests of the A. F. of L. are involved.

The National office of the A. F. of L., from time to time upon request of the affiliated organizations, assigns organizers to assist such affiliated organizations in the or- [fol. 213] ganizing of workers in their organizing activities. Specific or general problems of each of the affiliated organizations of the A. F. of L. are frequently brought to the attention of the national officers of the A. F. of L. in order that they or their associates may assist such affiliated organizations in the solution of such problems.

The A. F. of L. is constantly being called upon to render financial assistance or to furnish personnel to assist its various affiliated organizations in their manifold activities both in terms of organizing, collective bargaining with employers, legislative work, and in all of their other activities and pursuits.

The national office of the A. F. of L., its officers and representatives, are in constant contact with the affiliated organizations of the A. F. of L. and their local unions throughout the country and maintain a steady and regular flow of correspondence, communication and personal contact through the regional representatives of the A. F. of L. with the personnel of all of the affiliated organizations of the A. F. of L. and their respective local unions. The A. F. of L. conveys to the A. F. of L. unions in Alabama and to all the A. F. of L. unions throughout the nation the benefit of the experience of the A. F. of L. unions everywhere.

The United Brotherhood of Carpenters and Joiners of America (hereinafter called the U. B. C. J. is an international labor union affiliated with the Alabama State Federation of Labor and the A. F. of L. All of the facts hereinafter set forth in regard to the U. B. C. J. are the same in regard to, and shall be deemed to be applicable to, all of the numerous national and international labor unions, affiliated with the A. F. of L. A copy of the Constitution and laws of the U. B. C. J. is incorporated herein and marked Exhibit 1-A.

The U. B. C. J. is a voluntary, unincorporated association of the employees in the carpenter and joiner trade, and is organized for the purpose of dealing with employers concerning hours of work, rates of pay, working conditions or grievances of any kind relating to employment. It has a

total membership of approximately 700,000 persons in numerous states of the United States and Canada, including approximately 15,000 who are employed in and are residents of the State of Alabama. Its members are orgnized into autonomous subdivisions known as local unions. One of such unions, located in the State of Alabama, is local union No. 103.

[fol. 214] The U. B. C. J. is a party to every contract entered into by its locals or by the U. B. C. J., including its local unions in Alabama. This practice is in accordance with the rules of the Executive Board of the U. B. C. J.

At all times mentioned in the complaint, the Order of Railway Conductors, the Brotherhood of Locomotive Engineers, the Brotherhood of Enginemen and Firemen, the Brotherhood of Railway Trainmen were and are now, voluntary, unincorporated associations of employees of common carriers and corporations engaged in the transportation by rail of persons, baggage and other articles in all states of the United States, including the State of Alabama. Said common carriers are subject to the provisions of the Railway Labor Act. Said organizations have a membership of many thousands of persons throughout the United States, a large portion of which membership, in excess of 12,000, reside in and are residents of the State of Alabama. Its members are organized into autonomous subdivisions known as local unions, a large number of which are located in the State of Alabama. Said organizations just named are not affiliated with the American Federation of Labor, nor are they affiliated with the Alabama State Federation of Labor, and are not affected in anyway by said Act No. 298 above referred to. The local unions of the four orders named are conducted and operated in precisely the same manner as Local No. 103. Each of said national organizations is operated in precisely the same way as the United Brotherhood of Carpenters and Joiners of America.

At all times mentioned in the complaint local labor organizations of the railway clerks, local labor organizations of the railway telegraphers, local labor organizations of the railway boilermakers, local labor organizations of the railway sheet metal workers, local labor organizations of the railway electricians, local labor organizations of the railway blacksmiths, local labor organization of the railway machinists, local labor organizations of the railway main-

tenance men, local labor orgnizations of the Pullman Porters, were and are now unincorporated associations of employees of common carriers and corporations engaged in the transportation by railroad of persons, baggage and other articles in all states of the United States, including the State of Alabama. Said organizations are affiliated [fol. 215] with the American Federation of Labor, but membership in said organizations is composed of or restricted to employees of common carriers. Said common carriers are subject to the provisions of the Railway Labor Act. Said organizations have a membership of many thousands of persons throughout the United States, a large portion of which, in excess of 12,000, reside in and are residents of the State of Alabama. Said local organizations are affiliated with national organizations have jurisdiction over the particular trade or craft, all of which are organized and operated precisely along the same line as the United Brotherhood of Carpenters and Joiners of America, and said local labor organizations of said crafts and trades affiliated with the Alabama State Federation of Labor and the American Federation of Labor are organized in precisely the same way and operated in precisely the same manner as the trade, craft and industrial organizations affiliated with the Alabama State Federation of Labor whose membership is not composed of the employees of common carriers.

All of the complainant unincorporated associations are organizations and associations of employees in various trades, occupations and industries who have from time to time assembled and associated together, and are assembling and associating together, for the purpose of further organizing themselves into labor unions and for the purpose of assisting their organizations so formed, including the complainants herein named, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and otherwise dealing with their employers concerning hours of employment, rates of pay, working conditions or grievances of any kind relating to employment and for other mutual aid and protection.

To further the purposes set forth herein, the U. B. C. J. and its locals, including Local No. 103, exchange and discuss among and between themselves ideas and information relating to said purposes and arrive at mutual and common decisions, disseminate to the public and to fellow employees

who have not joined in the association and to public officers and representatives of government of the various states, including Alabama, and of the United States, facts, information and opinions concerning the U. B. C. J. and its locals, their purposes and objectives, the problems of their members and of wage earners generally, the benefits of the [Vol. 216] National Labor Relations Act and other federal and state statutes and the rights guaranteed thereby, and the harmful effects to organized labor of any and all legislation which is not considered beneficial to organized labor.

In this connection the U. B. C. J. maintains an educational program, fosters training and educational courses in its locals, including Local No. 103, distributes educational material to its locals for such purposes, maintains a national publication known as "The Carpenter", fosters publication and maintenance of local publications, maintains a legislative service by which it keeps its locals informed regarding federal and state legislation and proposed legislation. In the carrying out of these functions, the U. B. C. J. and its locals, including Local No. 103, spend considerable money each year. In addition, the U. B. C. J. and its locals make an effort to cement the interests of organized labor and of employees in individual trades and industries for their mutual protection, to establish fraternal relations among such employees, to insure harmonious cooperative action, to protect and promote the rights, privileges and immunities of wage earners and the general welfare of labor organizations and employees represented by and affiliated with the U. B. C. J. and its locals and all labor generally, and to enhance the dignity of labor.

The U. B. C. J. maintains more than 3,500 representatives throughout the nation whose function it is to represent the U. B. C. J., assist the locals in the region, direct the organization of new locals, inform locals in the region of U. B. C. J. policies generally, and as they relate to specific problems confronting local unions, and to participate in the solution of such problems where assistance is sought by local unions or where the interests of the U. B. C. J. are involved. Alabama is included in such a region.

In addition, it has been the practice of the U. B. C. J. to maintain contact with its locals throughout the country, including Alabama, through U. B. C. J. visiting representatives. These visits are a regular part of the operations of the U. B. C. J. in relation to its locals. Visits to

Alabama locals involve approximately 10 representatives who each visit Alabama approximately twelve times in the course of every six months, remaining in Alabama for a period varying from one day to permanent attendance. It is customary for such representatives to contact the leadership of locals in Alabama as well as elsewhere, to meet with [fol. 217] representatives and committees of such locals, to address the membership of such locals at membership meetings, and its plants and shops where a local has not been organized to meet with members of the U. B. C. J. in an effort to assist and further such organizations.

The U. B. C. J. is in constant contact with its locals throughout the country and maintains a steady and regular flow of correspondence, communication and personal contact with the personnel of all of its locals. The U. B. C. J. conveys to its locals in Alabama as well as to all of its locals elsewhere the benefit of the experience of the locals of the U. B. C. J. everywhere.

The U. B. C. J. representatives in the field are instructed or authorized generally regarding their duties, functions or activities. They exercise their own discretion in determining the matters in which they participate, the manner of their participation, the advice they give, the persons or committees they contact, the nature and character of the speeches they make, and the solutions that they propose for particular problems. They likewise determine the scope of their activity in organizing new locals and recruiting new members, including the question of which plants it is proposed under the circumstances to organize.

The U. B. C. J. and its local unions seek to establish exclusive bargaining rights in the plants of employers where their membership are employed for the purpose of obtaining collective bargaining contracts.

If an employee of any employer who is a member of the U. B. C. J. disregards the provisions of the contract which has been executed by the U. B. C. J. as exclusive bargaining representatives of the employes of the particular plant or otherwise violates the constitution of the U. B. C. J. or by-laws of the local union, said member may, under said constitution or by-laws, be censured, disciplined or expelled. The discipline may involve the punishment of not exercising the right to vote for a specified period of time.

The U. B. C. J. and its local unions seek to obtain collective bargaining agreements containing all-union or closed

shop agreements or other forms of union security such as maintenance of membership.

The U. B. C. J. in accordance with its own constitution submits detailed financial reports periodically to all of its local unions and membership.

[fol. 218] There are plants located in the State of Alabama which are owned by an employer that owns other plants in other states and all of such plants perform substantially the same type of work and produce substantially the same type of products. There are employers, all of whose plants are in the State of Alabama, or whose plants are in the State of Alabama, and in other states, who are engaged in manifold industrial activities ranging from the procurement of raw materials to the processing of many finished products.

There are plants, located in the State of Alabama whose employees are within the jurisdiction of the Alabama State Federation of Labor and Local No. 103, or of other A. F. of L. unions within the class for which the complaint has been filed, which are engaged in intrastate commerce and there are some of such plants which are engaged in interstate commerce, and there are some of such plants which are engaged in both interstate and intrastate commerce.

The U. B. C. J. seeks to organize into its membership all of the employees of the industries set forth in its constitution and in many situations all the employees of a particular employer even where such employer engages in activities which range over more than said industries.

Local No. 103 holds its regular meetings in accordance with its constitution and by-laws. At such meetings there is constant discussion regarding all of the objectives and purposes of the local union as herein set forth. A copy of the by-laws is incorporated herein, attached and marked "Exhibit 3".

Affiant further states that he is familiar with the internal affairs and activities of all unions affiliated with the American Federation of Labor operating in the State of Alabama and has personally attended many meetings of said unions throughout the state, and he personally knows many of the officers and representatives of said unions.

That to affiant's knowledge, the salaries, wages, bonuses and remuneration paid the president, secretary-treasurer, business agent, or other representatives of unions affiliated with the A. F. of L. operating in Alabama, are determined

either by vote of membership or are prescribed in duly adopted by-laws or constitutions adopted by a vote of the membership of either the international union or the local union, as the case may be. That in no instance, to affiant's [fol. 219] knowledge are any such officers or representatives of such labor organizations able to or do prescribe their own salaries, wages, or remuneration, without reference to the desires of the membership. That in all instances such salaries and other remuneration of such representatives are controlled by vote or choice of the membership and the membership is at all times fully aware of all remuneration received by their officers or representatives. That the average total salary or wage, including all bonuses and remuneration received by such representatives approximates $60.00 per week. That such remuneration varies from $30.00 per week to $100.00 per week for representatives who devote all of their time to representing or attending to the affairs of labor organizations. That in a very few instances such representatives receive $125.00 per week. That in addition thereto, such officer or representatives when using trains in traveling, are compensated for their actual expenses or else receive a flat per diem expense fee ranging from $5.00 to $10.00 per day, but in no instance to affiant's knowledge, being higher than $10.00 per day. That they may receive a car allowance varying from $10.00 to $35.00 per week. Not all representatives receive the car allowance.

That all labor organizations affiliated with the A. F. of L. operating in Alabama, prescribe a regular election date in either the duly adopted constitution or by-laws of such organizations, and affiant knows of no instance where such labor organization does not prescribe regular dates for election of officers.

Affiant further states that to his knowledge, regular elections of officers are held as a rule annually by all such labor organizations, and officers are elected by secret ballot in most instances, but in a few instances by roll-call, but in all instances officers are elected by a democratic choice of the membership.

That in no instance to affiant's knowledge, have any officers, representatives, or business agents of any labor organizations affiliated with the A. F. of L. operating in Alabama, the power to levy any dues, assessments or fees without reference to the membership.

That the internal affairs and activities of all such labor organizations are conducted in a democratic manner according to the rules and regulations prescribed in duly adopted by-laws and constitutions. That all matters affecting the members are determined by a majority vote of the membership, and particularly such matters as the determination to strike and the expenditure of any of the funds [fol. 220] or assets of the organization for all purposes are submitted to a majority vote of the membership, as is true of all contracts or working agreements. In the matter of discipline, members are given notice and an *an* opportunity to be heard on any charge filed against them, a trial is held and disciplinary action as determined by the members is taken. Members are disciplined only for violations of the duly adopted constitution or by-laws of the respective organization with which they are affiliated, which constitution and by-laws such members agree to and in many instances swear to comply with upon being taken into membership. The members have the right to appeal decisions adverse to them to the International Union.

With respect to the income, expenditures, assets and liabilities of all labor organizations affiliated with the A. F. of L. operating in Alabama, it is the practice to make regular accountings of all such financial matters to the members, either at regular monthly meetings or by quarterly audit of the books and records by duly elected trustees by auditing committees. That a number of such organizations regularly publish financial statements. That in cases where such statements are not published, such statements are orally read at regular meetings or are prepared by a duly elected auditing committee. That all officers and representatives of such labor organizations having anything to do with the finances of the organization are bonded. That all expenditures of any of the funds of any such labor organization are submitted to a vote of the membership for approval either before or after such expenditures are made.

That it is the standard practice of most labor organizations affiliated with the A. F. of L. operating in Alabama, after a particular plant or business has been organized, to request recognition, bargaining rights and an agreement in respect to wages, hours and working conditions, without obtaining certificates from either the National Labor Relations Board.

Affiant further states that membership is obtained by solicitation of non-union employees to join an organization. Such solicitation is done by business agents, officials and officers of all locals and such international representatives as may be in the state, and also by all the membership of all of the existing locals in the state.

Affiant further says that it is purely optional with each local labor union in Alabama as to whether said local union [fol. 221] affiliates with the Alabama State Federation of Labor, except in instances where the International requires them to affiliate with the Alabama State Federation of Labor. In instances of that kind the International body enforces such provision if it is enforced, but no attempt to enforce such provision is undertaken by the Alabama State Federation of Labor, inasmuch as its policy is that it shall be wholly optional and voluntary with each local organization as to whether it will affiliate with the Alabama State Federation. All local labor organizations whose national or international bodies are affiliated with the American Federation of Labor are invited to affiliate with the Alabama State Federation of Labor. When a local labor organization affiliates with the Alabama State Federation of Labor it contributes a sum equal to five cents per month per member to the Alabama State Federation of Labor, which goes into the general fund of that organization for the purpose of defraying its legitimate expenses.

The Alabama State Federation of Labor holds a convention once each year at some place in the State of Alabama selected by the last preceding convention. Each local union affiliated with the Alabama State Federation of Labor is entitled to send a certain number of delegates. Each local union is entitled to a minimum of two delegates to a convention and additional delegates depending upon the number of dues paying members in said local union in excess of fifty. At these annual conventions of the Alabama State Federation of Labor numerous national, state and local questions involving the welfare of labor, and many civic questions as well, are discussed and policies determined, and in turn carried back to the various locals, by the delegates who attend that convention

The officers of the Alabama State Federation of Labor, including its president, thirteen vice presidents from various districts throughout the state, secretary-treasurer, and

also a delegate to the national convention of the A. F. of L. are elected annually at the state convention by the delegates in attendance on said convention. The president of the Alabama State Federation of Labor is given an expense allowance of $50.00 per month by the state convention and the salary of the secretary-treasurer is fixed and authorized by the state convention. All other expenses of the Alabama State Federation of Labor are authorized or provided for by the state convention of the organization.

W. O. Hare, Affiant.

[fol. 222] Subscribed and sworn to before me this 11th day of August, 1943. Mary V. Tucker, Notary Public.

AFFIDAVIT OF SAM ROPER

STATE OF ALABAMA,
Jefferson County:

Personally appeared before me, the undersigned authority in and for said County in said State, Sam Roper, who, being by me duly sworn, deposes and says that he is President of the Alabama State Federation of Labor and that he makes this affidavit in connection with the cases filed by the Alabama State Federation of Labor in Jefferson and Montgomery Counties, attacking the constitutionality of the Bradford Bill.

And affiant says:

Industries Where Foremen Customarily Belong To Unions

There are at present 29 unions which permit, and in some cases, require membership of foremen in the same union as production workers. In most of these unions the inclusion of foremen has been a longstanding practice. One union, the United Mine Workers of America, has only recently adopted the necessary rules for the acceptance of supervisors into membership. Most of the unions which include foremen under the same agreements covering production workers are in the printing and building trades, in the metal trades insofar as they operate on a craft basis, and in many of the railroad trades.

Printing Trades

In both newspaper and book and job printing, union membership of foremen, under the closed-shop agreements, has been required since 1889. The practice is so thoroughly established that it now appears to be accepted as a matter of course. Contracts provide wage scales for foremen, and include foremen under other provisions. Foremen continue to have a voice and vote in the union, although they tend to become inactive members.

In early years, many publishers were strongly opposed to having their representatives owe allegiance to the union. As contracts became more inclusive, however, and rights of both employers and unions more clearly defined, publishers in general ceased to object. They are now chiefly concerned lest foremen should be subject to union discipline for differing with the local union in the interpretation of the terms of a contract. The internationals generally recog- [fol. 223] nize the justice of the publishers' position and a method is provided for the joint settlement of such disputes. The unions do not, however, forego their right to discipline foremen for disobeying laws relating to internal union matters, or for deliberately disregarding union rules. Although there is still occasional complaint that some locals attempt, by disciplining foremen, to enforce conditions not provided for in contracts, the practice is not so common as to constitute a major issue.

The foreman represents the employer in dealing with grievances arising in his department. He settles many day to-day grievances and complaints with the chapel (local) chairman, without recourse to the joint standing committee or to arbitration.

In book and job printing the union membership of foremen is so thoroughly established that it does not become an issue except occasionally in a newly organized plant. It is clearly recognized that the foreman's first responsibility is to management. His duty to the union is to administer the agreement fairly in the plant. There are advantages in this system in that the foreman, necessarily a skilled man himself, is thoroughly acquainted with the problems of the men and with the union agreement and rules. He is in good position, therefore, to interpret the union's position to mangement, and vice versa.

Building Trades

Nearly all the building-trades unions require foremen to be union members. Foremen usually work with tools along with the men they supervise. Union contracts therefore often regulate their wages, hours, ratio to journeymen, and the conditions under which they may use tools. Foremen are considered agents of the employer, with power to hire and fire under the terms of the contract. They are under the control of the union, however, to the extent that foremen who violate union rules are suspended and this automatically ends their foremanship.

The employer objects to such rules (regulating foremen's work) chiefly because the union reserves the right to discipline the foreman for his conduct on the job. A foreman convicted of "rushing" is subject to stricter discipline than a worker guilty of the same offense. His activities on the job are often subject to review by the union; workers may file complaints against him. Conviction results in sus- [fol. 224] pension from foreman's duties for a period of time, a fine, and frequently even suspension from the union. By giving the right of reviewing a foreman's activities to a joint trade board, this objection has been partly met.

Metal Trades

Although the practice is less uniform in the metal trades than in printing and building, the tradition among the metal-trades unions is to require foremen to be union members, and to establish wage rates for them. Thus, in shipyards under agreements signed by A. F. of L. metal-trades councils, foremen as well as working foremen are usually required to *to* be union members. Machinists generally expect foremen to be members until they become "general foremen," or superintendents. Some agreements require membership only of "working foremen," however. Foremen may attend meetings and have a vote in the union, although there are sometimes restrictions upon holding office.

Maritime Industry

The general practice in the maritime industry is for the unlicensed seamen to make up one unit, and for officers to be separately organized and to constitute separate bar-

gaining units. The National Organization of Masters, Mates, and Pilots (A. F. of L), United Licensed Officers (Independent), and National Marine Engineers' Beneficial Association (C. I. O.) are all unions of supervisory groups which bargain separately. Practice is not uniform, however, and there are cases where agreements of the above officers' organizations cover unlicensed personnel. For example, an agreement of the Marine Division, International Longshoremen's Association, covering tugboats in the Port of New York, covers all personnel from captain to deckhand.

Railroad Industry

There is extensive organization of supervisory personnel in the railroad industry. The practice varies, however, as to type of organization. Some foremen and supervisors are organized into unions of their own; in some crafts they belong to the same unions as the men whom they supervise. The National Mediation Board has not considered this a problem. It normally accepts the "class" or "craft" as a bargaining unit with whatever inclusions or exclusions have become the general practice in the industry or by [fols. 225-226] agreement of the contesting unions.

In engine service the engineers and firemen are usually, but not always, in separate unions. The engineers, of course, are in a supervisory position to the firemen; likewise, the conductors are in a supervisory position to brakemen. They are in separate bargaining units although not always in separate unions.

In yard service some of the yardmasters belong to the yardmasters' unions, although others are members of the train-service and the switchmen's unions. The yard foremen, together with the helpers and switch tenders, are normally affiliated with either the trainmen's or switchmen's union.

The agreements of the railway clerks, telegraphers, and signalmen cover both the supervisors and the men under them, although these agreements (like others on the railroads) often have a supplementary list of "excepted positions" including higher supervisory jobs. In the maintenance-of-way service, foremen are included in the same union and bargaining unit as the laborers. These latter

agreements, however, exclude supervisors in the track department and general foreman in the bridge and building department.

Sam Roper.

Sworn to and subscribed before me this 21 day of August, 1943. Mary V. Tucker, Notary Public. (Seal.)

[fol. 227] AFFIDAVIT OF WILLIAM GREEN

STATE OF OHIO,
County of Coshocton, ss:

WILLIAM GREEN, being duly sworn, deposes and says:

1. I reside at Coshocton, Ohio.

2. I make this affidavit in support of the application of the plaintiffs for an injunction as prayed for in the complaint filed in Montgomery County, Alabama.

3. I am President of the American Federation of Labor (hereinafter called the "A. F. of L.") have been President continuously since December, 1924.

4. I have been a member of a labor organization continuously during the past fifty years. For twenty-four years, from 1900 until 1924, I had been an elected officer, first as a sub-district President, then as district President, and then as the national Secretary-Treasurer of one of the largest labor unions in the United States.

5. In my capacity as an elected official of the aforesaid labor unions, I have been directly involved in the past forty-five years in directing organizing campaigns among the unorganized workers and have participated in countless collective bargaining conferences with employers seeking the consummation of collective bargaining agreements, and have been directly involved in the administration of such collective bargaining agreements and in the administration of the internal affairs of various labor unions. Prior to my election as an official of said labor unions, I was an active union member in the local union of which I was a member, and participated in its affairs in organizing the unorganized workers who were within the jurisdiction of said local

union, and participated in the adjustment of grievances of the union members under the contract between the employer and said national union with which my local union was affiliated.

6. As the President of the A. F. of L., I have been in constant touch with the national and local officials of many of the labor unions affiliated with the A. F. of L. In this manner these officials have brought to me the problems which they have in the course of their normal operations and activities, and I, in turn, have been able to give them the benefit of the experience of the other labor organizations affiliated with the A. F. of L., together with the experience of the A. F. of L. as a national body and also have given them the assistance of the A. F. of L. in the endeavor to aid and solve their specific problems.

7. A basic reason for the creation of national and inter- [fol. 228] national unions is labor's recognition and appreciation of the form or organization adopted by employers during the past twenty or thirty years. Modern capital organized large corporations employing thousands of employees. Each such corporation owns and operates either directly or through subsidiaries many plants located in various parts of the country. Modern industry has leaped completely over State lines in its process of integration. Through interlocking directorates, these large corporations are induced to adopt a standard labor policy applicable to all of their employees. As a result of technical developments and the increasing control exercised by these large corporations, individual companies, including some which operate within the State of Alabama, have extended their operations beyond any one industry and actually own and control enterprises covering manifold operations extending from the procurement of raw materials through the processing of innumerable finished products.

9. There are plants located in the State of Alabama which are owned by an employer that owns plants in other states. All of such plants perform substantially the same type of work and produce substantially the same type of products.

10. Labor unions are organized for the primary purpose of enabling their members through such organizations to meet, on a basis of equality of economic bargaining power,

their employers in collective bargaining and obtain improvements in wages, hours or work, and other conditions of employment. A. F. of L. unions seek to organize all the employees within a specific industry, either on craft or occupational lines or on industrial lines.

11. An objective of the A. F. of L. unions is to obtain a single collective bargaining contract with each employer covering all of the plants of such employer and, if possible, a single collective bargaining contract covering all of the employees in the same industry.

12. The A. F. of L. unions also recognize the need of joining into a national federation, namely, the A. F. of L., in order that through such federation the A. F. of L. unions could protect their individual and joint interests.

13. The A. F. of L. is governed by a constitution which is adopted at its annual convention. The last convention was held in October, 1942. The delegates to each of the national conventions of the A. F. of L. are selected by the separate affiliated organizations of the A. F. of L.

14. The A. F. of L. is a voluntary and unincorporated [fol. 229] association composed of numerous voluntary and unincorporated associations of labor unions known as national and international labor unions, state federations, city central bodies, and directly affiliated local unions. The A. F. of L. issues certificates of affiliation to each of such affiliates. Each national and international union affiliated with the A. F. of L. has its own constitution. Each of said organizations issues charters to its respective local unions. Each of said national and international unions affiliated with the A. F. of L. is an organization of employees in particular trades, crafts or industries, organized for the purpose of dealing with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment. The A. F. of L. is, therefore, the single organization to which all of these various labor organizations are affiliated for the purpose of securing greater strength to all through the united effort and policies which can be established and achieved through such single national organization. Each affiliated organization of the A. F. of L. has so affiliated itself to be associated with other labor organizations so as to fully develop its own

strength and achieve a high degree of organization of the workers within its jurisdiction. Neither the A. F. of L. nor any of its affiliated unions nor any of the local unions of such affiliates engage in any activity of a commercial nature or in any business conducted for a profit.

15. The strength and interests of any one local union affiliated with one of the national or international unions, which in turn is affiliated with the A. F. of L., depend upon the fact that there is such a national organization as the A. F. of L. unifying and cementing the activities of all the A. F. of L. organizations.

17. The A. F. of L. maintains its principal office in the City of Washington, District of Columbia.

18. The total membership of the affiliates of the A. F. of L. throughout the States of the United States, including the State of Alabama and Canada, exceeds five million working men and women.

19. To effectuate the purposes of the A. F. of L. as set forth in its constitution, the affiliated unions of the A. F. of L. exchange and discuss among and between themselves ideas and information relating to said objectives and arrive at mutual and common decisions, disseminate to the public and to the workers of the nation who have not joined any affiliated organization of the A. F. of L., and to public officers and representatives of the governments of the [fol. 230] various States, including Alabama, and of the United States, facts, information and opinions concerning the A. F. of L. and its affiliated organizations, their purposes and objectives; problems of the membership of the A. F. of L. and of the wage earners generally, the benefits of the National Labor Relations Act and other federal and state statutes and the rights guaranteed thereby and the harmful effects to organized labor of any and all legislation which is not considered beneficial to organized labor. In this connection the A. F. of L. maintains an educational program, distributes educational material to its affiliated organizations, maintains a national publication known as "The American Federationists," maintains a national legislative service by which it keeps its affiliated organizations informed regarding Federal and State legislation and proposed legislation. Considerable monies are expended by the A. F. of L. in behalf of such activities.

20. The national office of the A. F. of L. maintains several hundred regional representatives throughout the nation to assist in the uniform operations and policies of the A. F. of L. and its affiliated unions. These representatives represent the A. F. of L. in their respective regions, assist the affiliated organizations of the A. F. of L. in their respective regions, assist in the organization of new local unions to be affiliated with one of the national or international unions affiliated with the A. F. of L., inform the local unions of the affiliated organizations of the A. F. of L. regarding A. F. of L. policies generally and as they relate to specific problems confronting said local unions, and participate in the solution of such problems where their assistance is sought by local unions or where the interests of the A. F. of L. are involved.

21. The national office of the A. F. of L. from time to time, upon request of the affiliated organizations, assigns organizers to said affiliated organizations throughout the country in the organizing of workers in their organizing activities. Specific or general problems of each of the affiliated organizations of the A. F. of L. are frequently brought to the attention of the national officers of the A. F. of L. in order that they or their associates may assist said affiliated organizations in the solution of such problems.

22. The A. F. of L. is constantly being called upon to render financial assistance or to furnish personnel to assist its various affiliated organizations in their manifold activities both in terms of organizing, collective bargaining with [fol. 231] employers, legislative work, and in all of their other activities and pursuits.

23. The national office of the A. F. of L., its officers and representatives, are in constant contact with the affiliated organizations of the A. F. of L. and their local unions throughout the country and maintain a regular and steady flow of correspondence, communication and personal contact through the regional representatives of the A. F. of L. with the personnel of all the affiliated organizations of the A. F. of L. and their respective local unions. The A. F. of L. conveys to the A. F. of L. unions in Alabama and to all of the A. F. of L. unions throughout the nation the benefit of the experience of the A. F. of L. unions everywhere.

24. The income received by the A. F. of L., as indicated by its constitution is derived solely from the per capita tax payments of its affiliated organizations and nominal fees for its charter.

25. As part of its general activity in furtherance of its objectives set forth in its constitution, the A. F. of L. maintains a national legislative department. The representatives of the A. F. of L. in charge of this department; working in collaboration with the national representatives of the various A. F. of L. unions located in Washington, District of Columbia, remain in constant touch with the activities of Congress by way of testifying before Congressional committees in connection with measures in which organized labor has an interest, communicating to members of Congress the views and attitude of organized labor in regard to specific measures pending before Congress, communicating with the affiliated organizations of the A. F. of L. the contents and status of measures pending in Congress, arranging for delegations of members of A. F. of L. unions to visit their Congressmen in Washington, D. C., or in the home districts, for the purpose of presenting to members of Congress their petitions covering the views of such members and of their organizations, and in constantly publicizing the contents of measures pending before Congress, action taken by Congressmen in regard to specific measures, and the attitude and views of organized labor, and particularly the A. F. of L., in regard thereto. The national legislative department of the A. F. of L. communicates with all of the affiliated A. F. of L. unions, advising them of the voting records of Congressmen in order to acquaint the membership of the A. F. of L. with the action that has been taken by their Congressmen in regard to measures with which organized labor is concerned.

26. As President of the A. F. of L., I am familiar with [fol. 232] organization and operation of all the plaintiff organizations affiliated with the A. F. of L.

27. Some of the national or international unions affiliated with the A. F. of L. are parties to every contract entered into by their locals, including their local unions in Alabama. This practice is in accordance with their respective constitutions.

28. The national and international unions affiliated with the A. F. of L. are governed by constitutions and by-laws which are similar in many respects.

29. In furtherance of the obectives set forth in their constitutions, the national and international unions and their local unions exchange and discuss among and between themselves ideas and information relating to said purposes and obectives and arrive at mutual and common decisions, disseminate to the public and to fellow employees who have not joined in the association, and to public officers and representatives of government of the various states, including Alabama, and of the United States, facts, information and opinions concerning the A. F. of L. and its affiliated unions, their purposes and obectives, the problems of their members and of wage earners generally, the benefits of the National Labor Relations Act and other federal and state statutes and the rights guaranteed thereby, and the harmful effects to organized labor of any and all legislation which is not considered beneficial to organized labor.

30. In this connection, many of these national and international unions maintain an educational program, foster training and education courses in their local unions, distribute educational material to their local unions for such purposes, maintain national publications, foster publication and maintenance of local union publications, maintain a legislative service by which they keep their local unions informed regarding federal and state legislation and proposed legislation. These national and international unions and their local unions make an effort to cement the interests of organized labor and of employees in individual trades and industries for their mutual protection, to establish fraternal relations among such employees, to insure harmonious cooperative action, to protect and promote the rights, privileges and immunities of wage earners and the general welfare of labor organizations and of employees represented by and affiliated with these unions and their local unions and all labor generally and to enhance the dignity of labor.

[fol. 233] 31. These national and international unions are in constant contact with their local unions throughout the country and maintain a regular and steady flow of correspondence, communication and personal contact with the

personnel of all of their local unions. These national and international unions convey to their local unions in Alabama, as well as to their local unions elsewhere the benefit of their experience everywhere.

32. These national and international unions maintain many representatives throughout the nation whose function it is to represent these unions, assist the local unions in the region, direct the organization of new local unions, inform local unions in the region of international union policies generally, and as they relate to the specific problems confronting local unions, and to participate in the solution of such problems where assistance is sought by local unions or where the interests of these unions are involved.

33. Each of these national and international unions seek to organize into their membership all of the employees of the industries or crafts set forth in their respective constitutions, and in some situations of all the employees of a particular employer even where such employer engages in activities which range over more than said industries.

34. On the basis of the experience which I have had during the past fifty years as a union member and union official, and especially as the President of the A. F. of L., I am fully and completely acquainted with the activities that must be engaged in by every international union and its local unions in connection with the organizing of employees into membership, the administration of the affairs of the international unions and their local unions and their relations with employers. These activities which I shall describe are an integral part of the existence, operation, and functioning of each international union and its local unions. All of the facts which I shall set forth are the same in regard to and are applicable to all of the national and international labor unions affiliated with the A. F. of L. plaintiffs in this action, and their respective local unions and members.

The employees of a particular plant or in a particular craft thereof are unorganized and are not members of any union. Several of such employees form a group as a result of discussion among themselves for the purpose of seeking assistance from and enlisting the aid of a union to accomplish the organization of all of the employees at the plant into a single union. This group, which will represent only

[fol. 234] a minority of the employees in a plant or in the craft, contacts the local or regional representatives of an international union or the national office of the international union or the representatives of the A. F. of L. or some other affiliated union of the A. F. of L. in order to obtain both advice and aid as to how to go about organizing the other employees in the plant. Or, the international union, through its national, regional or local representatives or the representatives of the State Federation of Labor, initiates an organizing campaign among the employees of the plant by way of distributing handbills, leaflets or pamphlets at the gates of said plants as the employees are entering or leaving the plant for the purpose of inducing said employees to join the international union.

The organizing activities among the employees of the *the* particular plant in question continue. Such organizing activities consist, on the part of all the union members who are employees of the plant, or discussion with and solicitation of the other employees who are not union members in the endeavor to solicit them into membership. Such discussion and exchange of ideas occur constantly during the lunch period or other occasions not on company time but while on company property. There is also the constant distribution of leaflets, handbills and pamphlets to employees by members of the union, the local, regional and national representatives of the international union and the regional and national representatives of the A. F. of L., as the employees are entering or leaving the plant gates. The employees of the plant who are members of the union, together with the local, regional and national representatives of the international union and the A. F. of L., visit the homes of the employees who are not members of the union for the purpose of discussing with them the need and desirability of their joining the union.

Concurrently, public meetings are held to which are invited the employees of the plant and all other persons in the local community who may wish to attend. These meetings are advertised through the distribution of handbills and leaflets at the plant gates, through advertisements in the local newspapers, billboards and otherwise. The meetings are addressed by union members or non-union employees of the plant, local, regional and national representatives of the international union, of the A. F. of L., and of other A. F. of L. unions.

In all such discussion and solicitation of membership, the individual members of the union or the local, regional or national representatives of the international union or of the A. F. of L., when they succeed in having a non-member [fol. 235] express a desire to join the union, give to such employee a membership or authorization card which the employee executed which signifies that the employee has joined the union and thereby becomes entitled to the rights and privileges of such membership and has authorized the union to act for him as the collective bargaining representative. Employees who are not members of the union will also frequently request members of the union to give them membership or authorization cards which they can execute and thereby become members of the union.

The organizing campaign among the employees of a particular plant is in the ordinary course of organizing operations of the international union, or it is part of a special national organizing campaign in connection with all of the plants of the particular employer located in the State of Alabama and other States, or among the plants of a particular portion of an industry which may be located both in the State of Alabama and in other States.

The group of members of the union in the particular plant which initiated the organization does not receive a charter from the international union until a larger percentage of the employees of the plant or in the craft in the plant have become members. When such percentage of the employees in the plant or in the craft in the plant have become members of the international union, a charter is issued to the group which then becomes a local union of the international union operating under the constitution and by-laws of the international union in accordace therewith.

Both prior to and after the receipt of the charter, but before the local union has become recognized as the exclusive bargaining representative for all the employees in the plant or in the craft in the plant, the members of the union as a group select, from time to time, individuals, groups or committees, (the members of which are known as "Shop Committeemen" or "Shop Stewards") comprised of employees of the plant and of the local and national representatives of the international union and of the A. F. of L., to present to the employer in regular meetings the views, requests, problems and grievances of the members. These representatives so selected by the members

of the union are usually chosen by way of departments or smaller units thereof within the plant. They meet with the representatives of the management regularly in the endeavor, through negotiation, bargaining, solicitation and persuasion, to obtain from the employer adjustment of grievances and obtain from the employer certain rights, [fol. 236] privileges and benefits on behalf of the members and thereby improve the working conditions of the employees thus represented. Frequently, such negotiations result in the establishment of formal grievance machinery. For the benefit of representatives of the union who present the grievances, the Educational Department of the international union issues pamphlets to all of these representatives and to all members of the union.

The local union, through its individual members in the plant, and the local and national representatives of the international union and the A. F. of L., continue to seek to solicit new members in the same manner as they originally solicited members in the effort to induce all of the employees in the plant to become members of the union. When a substantial number of the employees of a plant or in the craft in the plant have become members of the local union, (and the plant is subject to the provisions of the National Labor Relations Act), the union files a petition with the National Labor Relations Board to obtain certification as exclusive bargaining representative. The National Labor Relations Board holds an election among the employees in the appropriate unit of the plant, and in the event the union wins the election by a majority vote of the employees who have voted in the election, the National Labor Relations Board certifies the union as the exclusive bargaining representative. The union thus certified enters into collective bargaining conferences with the employer, looking toward the consummation of a written contract embodying the terms and conditions of employment relating to rate of pay, hours of work, and other conditions of employment.

Elections held by the National Labor Relations Board have covered several plants of a single employer, some of which are in Alabama and others in other states, and the collective bargaining contract thereafter consummated embraces all of such plants.

Even after the execution of the contract, the members of the local union in the plant and the local and national

representatives of the international union and the A. F. of L. continue to solicit those employees of the plant who are not members to become memebers, and upon their acceptance issue membership cards to the employees, which upon execution by the employee signifies that the employee has joined the union and thereby becomes entitled to the rights and privilges of such membership.

[fol. 237] The local union holds its regular meetings in accordance with its constitution and by-laws. At such meetings there is constant discussion regarding all of the objectives and purposes of the local union as herein set forth. Pamphlets are issued by the Education Department of the international union to all of the union members.

In accordance with the constitution and by-laws of the international union and its local unions, there is an elected official of the local union who has charge of the financial records of the local union. This official maintains his books in a manner as to indicate which members have paid their dues each month. For each such payment, the individual member receives dues stamps which he places in his dues book which the individual member keeps in his own possession. Certain employees, who are members of the union, are elected in accordance with the provisions of the constitution and by-laws of the local union as the designated representatives of the union who collect dues from the individual members each month, exchange for such dies the dues stamps. These representatives are s-lected for each department or unit thereof within the plant in order to facilitate the payment of dues by the individual members.

35. It is the objective of all labor organizations, including the plaintiffs herein, to negotiate and bargain with persons employing members of such organizations with respect to wages, hours and working conditions of the members of said unions and pertaining to the other matters affecting or threatening the economic standards or the mutual welfare of the members of such unions; to obtain collective bargaining agreements with such employers and to secure the interests in such agreements of clauses requiring employees to become and remain members of the labor organization involved.

38. In the process of negotiating a contract between a union and an employer, a labor union customarily adopts

the following procedure and the process of collective bargaining is as follows:

First, insofar as the procedure of the labor union is concerned, a labor union may be negotiating a contract with an employer covering a single plant. In this situation there may be only a single local union involved. However, it may be that the plant is sufficiently large so that the labor organization has more than one local union covering the employees in such plant. The negotiations may cover more than one plant of the employer, which plants may all be located in Alabama or some in Alabama and some in other states. The usual procedure for labor unions is to have [fol. 238] discussion at local union meetings as to the issues to be raised and the demands to be made to the employer in the collective bargaining conferences. Where a single local union is involved, the decision of the membership as to the demands which they desire to make in collective bargaining is made at the local union meeting. A committee is then designated by the local union authorized to enter into collective bargaining with the employer for the purpose of arriving at a proposed and tentative collective bargaining agreement. Either from time to time or upon the completion of the tentative contract the matter is brought back to the membership of the local union for approval or disapproval or suggested changes. The final decision to approve or disapprove a proposed collective bargaining agreement rests with the majority of the membership of the local union. In addition, before a contract can be finally executed, in some instances it must be approved by the international organization and the international officers. The reason for this latter requirement is that any precedent established in a collective bargaining contract involving any employer in a particular industry must necessarily have its impact upon other collective bargaining contracts entered into by the same union on behalf of other local unions with other employers in the same industry. Thus, where a union has a national policy that it will seek union security and succeeds in obtaining such union security provisions from certain employers outside of the State of Alabama within a certain specified industry, and thereafter a local union of the same international union in the State of Alabama enters into a contract without any union security provision, this fact will be utilized by the

employers outside of the State of Alabama to deny and reject the union's demands for union security in these other cases.

Where more than one local union is involved in the negotiations and to be covered by the contract to be negotiated, the local unions have membership meetings to discuss the issues which the membership wishes to have raised in the negotiations. Delegates are then chosen by each local union who assemble in a single meeting with representatives of the international union for the purpose of arriving at a mutual understanding and agreement as to the issues to be discussed and submitted to the employer on behalf of all of the local unions. Under such circumstances, inconsistent demands on the part of the separate local unions cannot be presented. A set of consistent demands must be [fol. 239] presented on behalf of all of the membership to be covered by the contemplated collective bargaining agreement. The conference of delegates then chooses a negotiating committee to appear on behalf of all of the membership before the employer and to engage in collective bargaining. Any proposed or tentative agreement reached is brought back to the local union membership meetings for approval or disapproval or suggested changes. A majority vote of each local union affected is required before a contract stands as approved by the membership. The contract must also, in some instances, be approved by the international union and executed by the international officers before it becomes a final collective bargaining agreement. Where more than one local union is covered by the agreement, it simply is not practicable in terms of collective bargaining to have one set of requirements for approval of contracts or any provision thereof for the local union in Alabama as against the requirements that must be observed for approval of contracts in accordance with the constitution and by-laws of the union in connection with local unions of the same international union located in other states.

Second, insofar as the process of collective bargaining is concerned, in the process of collective bargaining there is constantly give and take on the part of both sides. Each side has a series of demands to make. Collective bargaining contemplates that in exchange for one demand another demand may be yielded. Unions are extremely anxious to

obtain provisions in collective bargaining contracts establishing union security, such as an all-union provision. Where an employer indicates that it is willing to grant such provision, a union may in exchange therefor yield some of its other demands. The all-union provision would have been presented at the collective bargaining conference only where the membership of the local unions affected have approved this demand in their local union meetings as indicated above.

40. Workers join labor organizations in order to establish equality of bargaining power with their employers for the purpose of obtaining improvements in their wages, hours and working conditions. Equality of bargaining power cannot be achieved by labor organizations unless their members have the right to lay down their tools in concert and take the issues to the public and to all other employees, by giving publicity to the issues by all lawful means, including peaceful picketing, when agreement with the employer cannot be reached. The right and power to do these things is particularly essential to a la- union which [fol. 240] is in a minority and has not yet either been certified or recognized and is striving to organize the workers and to negotiate and bargain with the employer. Unless labor organizations have the right to strike and to publicize the issues, an employer may with impunity disregard the requests and demands made by labor organizations in behalf of their members.

42. Furthermore, each national organization affiliated with the A. F. of L. seeks to organize all of the plants which fall within its jurisdiction.

43. The constitutions of the various national and international unions affiliated with the A. F. of L. are adopted at international conventions held, as a rule, annually. These constitutions are the supreme law governing these organizations, their affiliated unions, members and all of their national and local union officers. These constitutions, by their very terms, may be amended only by a majority vote at regularly held international conventions.

44. The international conventions are comprised of delegates from each local union of the national or international union. The number of delegates to which each local union is entitled depends upon the number of members in good

standing of such local union. Delegates are elected at meetings of members of the local unions called and held especially for the purpose of electing such delegates. The provisions covering the manner for the election of such delegates and the number of delegates to which each local union is entitled are specifically set forth in the international constitutions.

45. The complete relationship existing between local unions chartered by the international organization and the international organization is governed and covered by the provisions of the international constitution. Each local union adopts its own by-laws at a membership meeting called for that purpose, which by-laws must be consistent with and subject to the provisions of the international constitution. The by-laws of each local union by its terms may be amended at any regular meeting of the membership, by a majority vote of the membership, provided prior notice has been given to the members that the particular amendments are to be considerd and discussed at the meeting.

46. Local unions frequently, in connection with an organizing campaign at a particular plant, will engage, as volunteer agents of the union, its own members to further such organizing activity. For such work the local unions [fol. 241] will recompense such members for their time lost while they are engaged in such organizing activity on behalf of the union. It is administratively impossible to set forth in any by-laws of the local union any fixed amount to be paid to such volunteer agents because their pay varies depending upon their rate of pay customarily received from the employer.

The by-laws of the local unions fix the salaries of all the paid officers of the local union, which amounts may not be changed except by amendment of the by-laws. These salaries do not exceed the average wages of the individual employees working in the plant covered by the local union.

The amount of the dues and initiation fees of a union is determined by the entire membership of the union as reflected by the adoption of the constitution. The amount of such dues and initiation fees varies from union to union, determined by what the membership deems necessary to carry out the functions and objectives of the union and the special benefits which the union desires to confer. Some unions provide sick, accident, hospital, death and unem-

ployment payments and benefits for their employees and dependents. Under such provisions, dues and initiation fees may be higher than in other unions which do not undertake to provide for such benefits.

Some unions find it necessary to fix the amount of their dues in line with a special need for establishing a reserve to meet some specific emergency or special organizational drive.

The members of the international union are the ones who can best determine what they desire to impose upon themselves as their financial obligations to maintain their own voluntary association and provide it with sufficient funds to carry out their mutually established objectives. Labor unions have as their sole source of income these initiation fees and dues and the investment of their joint funds so created. The very life of a labor union depends upon its funds. Labor unions caught short of funds when in a life and death struggle with an employer or in connection with some important activity, are in a helpless situation. The financing of labor organizations is so closely related to the carrying out of their functions as to be absolutely inseparable from the exercise of their powers for the attainment of their objectives and purposes.

As I have indicated in other portions of this affidavit, the strength of any union depends in large measure upon the fact that the local unions embracing employees in a specific [fol. 242] industry have combined into a national union which affords the protection to all of its members. Just as a local union must have the power and authority to exercise discipline upon all of its members in the local union, equally so a national union must have the power and authority to exercise discipline over its respective local unions. This authority is not arbitrary and must not be exercised capriciously but only in accordance with the basic provisions of a constitution which has been adopted by all of the members. The constitutions of the various national and international unions usually permit under certain prescribed conditions, the international officers of the organization to designate an administrator for a local union where the affairs of the local union have become so confused and so disrupted as to practically threaten the existence of the local union itself. This practice is, of course, a very drastic one and followed only rarely, but when it is done it is because of the extraordinary circumstances and only when

compelled in the interests of the entire membership of the international organization. The administrator so designated, in accordance with the constitution of the international union, may of course maintain control of the affairs of the local union beyond the time for which local union officers would otherwise have been elected.

Labor unions and their members engage constantly in legislative and political matters on a local, state and national basis and with regard to local, state and national issues. The international offices of the national and international unions are constantly engaged in legislative and political matters. The funds of the international office are used to further the interests of the membership of that organization by sponsoring legislation deemed favorable to labor organizations and opposing legislation deemed inimical to the interests of labor unions. Some national or international unions maintain a national representative in Washington who keeps in close and constant touch with the activities of Congress which have any relationship with the interests of organized labor. This national representative, as well as other officials of the international union, appear before Congressional committees sponsoring and supporting various measures pending before Congress. Various national or international unions regularly communicate with and distribute to their local unions and membership and through their national papers or magazines full and complete information of the activities of Congress and of the contents of pending legislation to which the union has [fol. 243] taken a position, either for or against. The national or international unions encourage their local unions to discuss and adopt decisions regarding legislation that is pending before Congress or before state legislatures, in which organized labor has an interest. Local Unions are encouraged, and on their own they frequently send delegations of their members, to visit their representatives in Congress in Washington, D. C., or at home for the purpose of petitioning their elected representatives in the state of national legislature regarding pending or desired legislation.

Local unions, on their own and on the basis of information furnished to them by their international office, often discuss at their regular meetings problems pertaining to legislative and political matters. Funds of the local union are spent in petitioning members of Congress or members

of the state legislature in regard to pending or desired legislation.

In connection with political campaigns the members of local unions at regular local union meetings often discuss the problem as to the desirability or competency of prospective candidates running for political office, whether of local, state or national character. In this connection local unions will either endorse or oppose the candidacy of certain candidates. In support of the position thus taken by a local union, the local union and its members will hold public meetings, distribute leaflets, handbills, or run advertisements in local newspapers expressing the position that they have taken in regard to certain political candidates for local, state or national office.

The international constitution covers the procedure for the issuance of charters to new local unions. The charters which are issued under such constitutional authority specifically provide that they are subject to and governed by the terms and provisions of the international constitution. Any group of employees eligible for membership in the international union which requests a charter and receives the same is fully aware of the terms and provisions of the international constitution. Any such group of employees, therefore, upon acceptance of the charter, which establishes it as a local union of the international union, understands fully that it has entered into a firm compact with all the other local unions of the international union and all of the members of the international union as to how its affairs are to be governed and covering all of the rights, obligations and benefits of its own members in relation to [fol. 244] all the other members of the international union.

The expenditure of funds by a local union is very jealously guarded and protected by the membership under the provisions of the by-laws of each local union.

Further affiant saith not.

William Green.

Subscribed and sworn to before me on this, the 17 day of August, 1943.

Myra Lee, Notary Public. (Official Seal.)

[fol. 245] LETTER FROM W. EMMETT BROOKS

State of Alabama, Department of Labor

February 14, 1944.

To the Labor Union Addressed:

According to the records in this office, you are now delinquent in filing the annual financial report required by law to be filed on or before February 1 each year by labor organizations functioning in Alabama, and in complying with other provisions of the Act and the instructions of this department with reference to making copies of this report available to your membership.

You are therefore notified that if this report is not filed in my office on or before February 21 immediate steps will be taken to enforce the provisions of Section 7 of the Bradford Act which covers filing of such statements.

If you do not have the necessary blanks for making your report, you may obtain same by writing to this office or calling at the offices of the department in either Birmingham or Mobile.

Very truly yours, W. Emmett Brooks, Director Department of Labor.

P. S.—If you have less than twenty-five (25) members, the report referred to above is not required, but please advise us to that effect so that our records may be corrected accordingly.

ADMINISTRATIVE BULLETIN NO. 7

State of Alabama, Department of Labor

Administrative Bulletin No. 7

January 20, 1944.

For administrative purposes, the Director of Labor takes the position that since June 29, 1943, the effective date of Act No. 298 of the Legislature of Alabama, 1943, it has been unlawful in this state for an executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, adminis-

trative or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in the capacities named, unless it is necessary for such executive or supervisory employee to maintain his union membership in order to prevent forfeiture of insurance benefits which he might have accumulated prior to the passage of the Act. (Section 16).

[fol. 246] This interpretation will apply regardless of whether the executive, administrative, or supervisory employee is covered by a closed shop or union maintenance contract which was executed prior to the passage of the Bradford Act and which continues in effect.

In a previous administrative bulletin (#4, December 16, 1943) this department has held that a contract calling for closed shop or union maintenance which was in existence at the time the Bradford Act was passed would not be affected by Section 8 of the Act which has been construed by the Attorney General as making such contracts contrary to public policy in Alabama. However, in view of the difference in language employed in Sections 8 and 16 a distinction must be drawn between a law which simply defines the public policy of the state and one of a penal nature which definitely makes the performance or omission of certain things a criminal offense.

It is fully recognized that the Legislature has no authority to pass a law impairing the obligation of an existing contract and the position of this department on that question is fully defined in its administrative bulletin #4 referred to above. However, it is well established by the Courts that a statute enacted within the scope of the police power of a state which imposes a penalty on the commission of certain acts is valid and not prohibited by the constitutional provision against laws impairing the obligation of contracts, notwithstanding such statute may interfere with or forbid the further performance of a contract existing at the time of its enactment.

Section 16 of the Act is no mere declaration of policy by the Legislature but a criminal statute, the violation of which is made a misdemeanor punishable by a fine not exceeding $500.00, or by imprisonment at hard labor not exceeding 12 months, or both. This being an exercise of the state's police power and imposing a penalty for a violation of the section, the Director of Labor holds that it does not

fall within the constitutional prohibition mentioned above but became effective with the approval of the Act, regardless of any contract that might have governed at that time the employment relationship of those subject to its provisions.

W. Emmett Brooks, Director Department of Labor.

[fol. 247] ADMINISTRATIVE BULLETIN No. 1

State of Alabama

Department of Labor

Administrative Bulletin No. 1

September 1, 1943.

Under Section 16 of the Bradford Act it is unlawful for a supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in administrative or supervisory capacities. This section further provides that it shall not be construed so as to interfere with or void any insurance contract in existence and in force at the time the Act became effective.

There are some trades and crafts in which, due to the skill and training involved, executive, administrative, and supervisory employees can only be secured from the ranks of their unions and several of these organizations not only provide life insurance benefits for their members but other benefits such as disability income, old age retirement, and the privileges of homes for their aged and infirmed members.

The right to claim these benefits is based on the payment over long periods of dues or premiums, a portion or all of which is set aside for the purpose of taking care of beneficiaries when they become physically handicapped through misfortune or by reason of advancing age.

It appears from the language of the section referred to that the Legislature did not intend to deprive such persons of those rights and cause them to forfeit, through the surrender of their union membership, the benefits that may have accumulated during the past. This department

will, therefore, place a broad construction on the word "insurance" as used in the Act and will not consider executive and supervisory employees in violation of the law of it is necessary for them to continue their union membership in order not to forfeit any life, disability, or old age insurance benefits which they accumulated by reason of such membership prior to June 29, 1943, the effective date of the Act.

W. Emmett Brooks, Director Department of Labor.

[fol. 248] ADMINISTRATIVE BULLETION No. 6

State of Alabama

Department of Labor

Administrative Bulletin No. 6

January 6, 1944.

In order to enable labor organizations which are required to file annual financial statements with the Department of Labor to comply with Section 7 of Act No. 298 of the Legislature of Alabama of 1943 (Bradford Act), and at the same time eliminate the hardship that would fall on unions which do not have facilities for making a sufficient number of copies of their reports to deliver a copy to each individual member, the phrase "file with every member" as it appears in said Section 7 is hereby construed to mean "make available to every member".

Under this construction, the Director of Labor will hold that the provisions of Section 7 referred to have been complied with if the labor organization files a report with the Department of Labor, posts a copy of same on the bulletin board or in some other conspicuous place in the union offices or meeting place, and notifies the membership of the local that such report is available for inspection by the members.

Blanks for making these reports are supplied by the Department of Labor and should any individual member of a union request a copy of the financial report of his or her union for individual use, this Department will assist such member in obtaining a copy either from the offices of his local or from the files of the Department of Labor.

All such reports filed in conformity with the law will be treated as confidential by this Department and will not be available for public inspection.

W. Emmett Brooks, Director Department of Labor.

AFFIDAVIT OF W. EMMETT BROOKS

STATE OF ALABAMA,
Montgomery County:

Before me, Lucille Young, Notary Public in and for said County and State, this day personally appeared W. Emmett Brooks who, being duly sworn deposes and says:

That he is Director of the Department of Labor of the State of Alabama and as such Officer is charged with the [fol. 249] duty and responsibility of receiving and filing in his office the constitutions and by-laws of labor organizations functioning in said State and the annual financial statements of such labor organizations, all of the same being required by Section 7 of Act No. 298 of the Legislature of Alabama of 1943 known as the Bradford Act;

That all of said financial reports, after being received, indexed, and filed are placed in a steel cabinet and securely locked and that the only key to such cabinet is kept in the custody of the Director of Labor;

That at no time are any of said financial reports available to the public or to any employers of labor or to members of any labor organization, or to any other person except the Governor of Alabama; that none of the information contained in said reports is permitted to be transcribed or copied and that the data which they contain are not disclosed in any manner or by any means except to the Governor of Alabama as provided in said Act;

That all members of the administrative personnel of the Department of Labor who have any occasion to handle said financial reports during the necessary process of receiving, indexing and filing the same, are persons of unquestioned integrity by whom confidential matters are handled with absolute security and all such members have been given definite instructions by the Director of Labor that no information which appears in any such reports is to be made available to any person nor is any comment to be

made by any employee of the Department with reference to information or material contained in such reports;

That up to the date of this affidavit one hundred ninety two (192) financial reports have been filed with the Director of Labor under the provisions of said Section 7 by labor organizations functioning in Alabama and located in all parts of the State and that no protest has been made to the Director of Labor either orally or in writing by the officials of any labor union to the effect that the preparation and filing of the report called for under the Bradford Act entails an unreasonable amount of work or is in any way difficult or impossible of performance.

Further deponent saith not.

W. Emmett Brooks.

Sworn to and subscribed before me this 16th day of [fol. 250] February, 1944, Lucille Young, Notary Public, Montgomery County, Ala., My Commission expires, July 14, 1945. (Seal.)

United States Department of Labor Memorandum No. 7

Union Membership and Collective Bargaining by Foremen

April 1943

Memorandum No. 7

Industrial Relations Problems Arising Under War Production

Previous Memoranda

No. 1. Out of print.

No. 2. Wage Incentive Plans and Collective Bargaining.

No. 3. Wage Adjustments to Cost of Living Under Union Agreements.

No. 4. Military Service and War Job Clauses in Union Agreements.

No. 5. Types of Union Recognition in Effect in December 1942.

No. 6. Vacations and Holidays Provided Under Union Agreements. January 1943.

United States Department of Labor

Bureau of Labor Statistics

Working Conditions and Industrial Relations Branch
Prepared by the Industrial Relations Division, Florence Peterson, Chief.

Table of Contents

	Page
General Situation	1
Recent Developments	2
Industries Where Foremen Customarily Belong to Unions	
Printing	3
Building	4
Metal	5
Maritime	5
Railroads	6
Industries Where Foremen are Customarily Excluded From Membership in Unions Which Include Production Workers	7
[fol. 251] Foremen and Supervisors in British Trade Unions	8
Appendix	
Union Constitutions which Refer to Foremen	9
Unions Composed Solely of Foremen and Supervisors	10
Unions which Include Both Foremen and Production Workers	12
Unions Which Exclude Foremen	16

Union Membership and Collective Bargaining by Foremen

The membership of supervisory personnel in labor organizations and their inclusion under collective bargaining agreements is not a new development. Practice differs widely as between industries and unions, and in many cases within industries and among the various locals of international unions. The general outlines are clear, however, and can be summarized as follows:

1. Separate organization by supervisory groups has long been the practice in the maritime industry, in parts of the railroad industry and in the postal service. Some of these

international unions of supervisory employees are independent unions, while others are affiliated either with the American Federation of Labor or the Congress of Industrial Organizations. In addition, some international unions have locals whose membership is composed entirly of foremen. Recently several independent foremen's unions have been established whose membership is composed primarily of foremen in the mass production industries.

2. Foremen membership in unions and the inclusion of foremen under agreements covering production workers has long been the usual practice in the printing and building trades, in the metal trades insofar as they operate on a craft basis, in many of the railroad trades, and to a greater or lesser extent, among the teamsters, longshoremen and others.

3. Exclusion of foremen and supervisors from membership in unions which include the production workers is the general rule in the mass production industries, such as steel, automobile, electrical manufacturing, rubber, and clothing. Some of the agreements, however, cover "working" foremen and supervisors such as gang leaders.

(LS 43-5160)

[fol. 252] Recent Developments

During the last few years there has been a pronounced movement on the part of foremen, especially in large companies, to organize into unions and to bargain collectively with their employers.

Automobile Industry.

An attempt at organization of foremen by the CIO in 1938-39 progressed to the extent of organizinng into eleven divisions in the Detroit plants and the signing of one agreement in a small plant. The movement collapsed, however, when the CIO promised to cease such organization at the time of its agreement with the Chrysler Corporation.[1]

More recently several foremen's unions have been established which are not affiliated with either the AFL or CIO. One of these, the Foremen's Association of America, has a signed agreement (as of March 2, 1943) with the Ford

[1] Ira B. Gross, When Foremen Joined the CIO, Personnel Journal, February 1940. pp. 274-283; March 1940. p. 346.

Company which covers 6 classifications of foremen, from shop foremen supervising 30 men to general foremen, supervising 150 men. On February 24, 1943, this union won a consent election at the Packard Motor Car Company.

Coal Mining.

The United Mine Workers, until 1942, excluded supervisory forces from membership. The Appalachian Agreement excludes "foremen, assistant foremen, bosses in charge of any labor * * * (and supervisory" employees. The Mine Officials' Union of America (Independent) was organized to bargain for supervisors, and following a National Labor Relations Board decision at the Union Collieries Coal Company (41 N. L. R. B. 961) it signed various contracts, effective until March 31, 1943. On October 8, 1943, the M.-O. U. A. petitioned the United Mine Workers to be admitted to membership. The U. M. W. revised its constitution to authorize the International Executive Board to "provide rules and regulations upon which supervisory and other employees may be admitted to membership." On February 5, 1943, the International Executive Board adopted the necessary rules for the acceptance of supervisors into membership after March 31, 1943. The M. O. U. A. is to dissolve as an organization, and supervisors are to be admitted on individual application to existing locals or separately created subdivisions. [2]

[fol. 253] Industries where foremen customarily belong to unions. Printing trades.

In both newspaper and book and job printing, which membership of foremen under the closed-shop agreements, has been required since 1889. The practice is so thoroughly established that it now appears to be accepted as a matter of course. Contracts provide wage scales for foremen, and include foremen under other provisions. Foremen continue to have a voice and vote in the union, although they tend to become inactive members. Recent studies reveal:

"In early years, many publishers were strongly opposed to having their representatives owe allegiance to the union. As contracts became more inclusive, however, and rights of both employers and unions more clearly defined, publishers in general ceased to object. They are now chiefly concerned

[2] United Mine Workers Journal, March 1, 1943, pp. 4-5, 9. Business Week, March 6, 1943, p. 83.

lest foremen should be subject to union discipline for differing with the local union in the interpretation of the terms of a contract. The internationals generally recognize the justice of the publishers' position and a method is provided for the joint settlement of such disputes. The unions do not however, forego their right to discipline foremen for disobeying laws relating to internal union matters, or for deliberately disregarding union rules. Although there is still occasional complaint that some locals attempt, by disciplining foremen, to enforce conditions not provided for in contracts, the practice is not so common as to constitute a major issue * * *.

"The foremen represents the employer in dealing with grievances arising in his department. He settles many day-to-day grievances and complaints with the chapel (local) chairman, without recourse to the joint standing committee or to arbitration.[3]

"In book and job printing the union membership of foremen is so thoroughly established that it does not become an issue except occasionally in a newly organized plant. It is clearly recognized that the foreman's first responsibility is to management.

[fol. 254] "His duty to the union is to administer the agreement fairly in the plant. There are advantages in this system in that the foreman, necessarily a skilled man himself, is thoroughly acquainted with the problems of the men and with the union agreement and rules. He is in good position, therefore, to interpret the union's position to management, and vice versa. However, the fact that he may be disciplined by the union, if the union considers that he has violated the agreement or a union rule is a source of difficulty in some cases. Fear of union discipline sometimes interferes with a foreman's efficiency, although the strong foreman is little affected. There is in some cases a need for more thorough protection of foremen from union discipline for carrying out office orders, pending determination of an issue through the negotiation or arbitration machinery."[4]

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[3] Twentieth Century Fund, How Collective Bargaining Works, New York 1942, pp. 67, 68.

[4] Ibid., p. 147.

Building trades.

Nearly all the building trades unions require foremen to be union members. Foremen usually work with tools along with the men they supervise. Union contracts therefore often regulate their wages, hours, ratio to journeymen, and the conditions under which they may use tools. Foremen are considered agents of the employer, with power to hire and fire under the terms of the contract. They are under the control of the union, however, to the extent that foremen who violate union rules are suspended and this automatically ends their foremanship. The following statement, written in 1929, is in all probability largely true today:

"The employer objects to such rules (regulating foremen's work) chiefly because the union reserves the right to discipline the foremen for his conduct on the job. A foreman convicted of 'rushing' is subject to stricter discipline than a worker guilty of the same offense. His activities on the job are often subject to review by the union; workers may file complaints against him. Conviction results in suspension from foreman's duties for a period of time, a fine and frequently even suspension from the union. These limitations on the formen's power restrict his supervisory initiative and deprive the employer of much of the value of his services. Recently, by giving the right of reviewing a foreman's activities to a joint trade board, this objection has been partly met." [5]

[fol. 255] Metal Trades.

While the practice is less uniform in the metal trades than in printing and building, the tradition among the metal trades unions is to require foremen to be union members, and to establish wage rates for them. Thus in shipyards under agreements signed by AFL metal trades councils, foremen as well as working foremen are usually required to be union members. Machinists generally expect foremen to be members until they become "general foremen," or superintendents. Some agreements require membership only of "working foremen," however. Foremen may attend

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[5] William Haber, Industrial Relations in the Building Industry, Cambridge, 1930, p. 218.

meetings and have a vote in the union, although there are sometimes restrictions upon holding office.

When the AFL metal trades unions, especially the machinists and the electrical workers, organize on an industrial basis, they generally follow the usual practice in the mass production industries, that is, to exclude foremen from agreements which cover production and maintenance employees. The point at which the break is made, between minor supervisors who are covered, and supervisors who are excluded, depends upon local conditions.

The Maritime Industry.

General practice in the maritime industry is for the unlicensed seamen to make up one unit, and for officers to be separately organized and to constitute separate bargaining units. The National Organization of Masters, Mates and Pilots (AFL), United Licensed Officers (Independent), and National Marine Engineers' Beneficial Association (CIO) are all unions of supervisory groups which bargain separately. Practice is not uniform, however, and there are cases where agreements of the above officers' organizations cover unlicensed personnel. For example, an agreement of the Marine Division, International Longshoremen's Association, covering tugboats in the Port of New York, covers all personnel from captain to deckhand.

Railroads.

There is extensive organization of supervisory personnel in the railroad industry. Practice varies, however, as to type. Some foremen and supervisors are organized into unions of their own; in some crafts they belong to the same unions as the men whom they supervise. The National [fol. 256] Mediation Board has not considered this a problem. It normally accepts the "class" or "craft" as a bargaining unit with whatever inclusions or exclusions have become the general practice in the industry or by agreement of the contesting unions.

In engine service the engineers and firemen are usually, but not always, in separate unions. The engineers, of course, are in a supervisory position to the firemen; likewise, the conductors are in a supervisory position to brakemen. They are in separate bargaining units although not always in separate unions.

In yard service some of the yard masters belong to the Yardmasters Unions although others belong to the train

service and the Switchmen's unions. The yard foremen together with the helpers and switch tenders are normally affiliated with either the trainmen or switchmen's union.

The agreements of the Railway Clerks, Telegraphers and Signalmen cover both the supervisors and the men under them although these agreements like others on the railroads often have a supplementary list of "excepted positions" including higher supervisory jobs. In the maintenance of way service foremen are included in the same union and bargaining unit as the laborers. These latter agreements, however, exclude supervisors in the track department and general foremen in the bridge and building department.

The seven craft unions in railroad shops include "leader men" as well as stationary engineers who act in part as supervisors. The foremen in the railroad shops are organizing in increasing numbers into a union of their own—the American Railway Supervisors' Association. Some supervisors and mechanics belong to a separate unit under the AFL Railway Employees' Department.

Industries Where Foremen Are Customarily Excluded From Membership In Unions Including Production Workers

In a majority of the mass production industries, foremen and supervisory officials do not belong to the unions to which the men who work under them belong although some belong to unions of their own. Also, foremen are specifically excluded from coverage under most of the collective agreements which cover production and maintenance workers. The line of distinction, however, is not always clearly defined, and may not be uniform from plant to plant even in the same industry. For instance, in some cases the term [fol. 257] "managerial position" or "supervisor" may be interpreted to exclude some foremen or section leaders. In other plants these persons may be considered as a part of the supervisory staff. Usually if there is a dispute between the employer and union over the question of interpretation the matter is taken up through the grievance machinery as provided in the agreement so that an arbitrator makes the final determination.

Typical agreement clauses relating to the status of foremen are:

"The employer agrees to employ none but members of the union excepting office workers and employees engaged in any kind of managerial position * * *"

"The company recognizes the union as the sole collective bargaining agency for all its production and maintenance employees, excluding superintendents, foremen and technicians."

Where foremen are excluded from coverage in the employer-union contract it is a decision jointly arrived at through collective bargaining. In such cases a union in one plant may include certain groups of employees which might be excluded in another plant with which the same union has an agreement. Where a union's constitution excludes certain types of workers, the practice throughout the union's jurisdiction would tend to be uniform, but there is the possibility of varying interpretations from plant to plant. The Constitutions of at least 37 international and national unions specifically exclude supervisors and foremen although some of them permit sub-foremen, assistant foremen, and gang or section bosses to be members. (See page 16.) Additional unions than these may in practice exclude foremen although no reference is made to foremen in their constitutions.

Foremen and Supervisors in British Trade Unions [1]

"The organization of supervisory grades of workers in ordinary Unions has increased in recent years. The Trades Union Congress recognizes non-manual workers as a separate Group among its affiliates and gives them separate representation on the General Council. The Group comprises 12 Unions, with a total membership of 140,000 workers in banking and insurance, clerks', actors', film artistes', musicians', and theatrical workers' Unions, and includes medical practitioners, cinetechnicians, and scientific workers.

[fol. 258] "Unions in other Groups of the T. U. C. cater for supervisory grades, swelling the total numbers. The Mining Group includes union colliery deputies (foremen underground). Superintendents and administrative workers are free to join the Railway Unions, and many do. The Transport Group, besides the Railway, includes the Navigators and Engineer Officers Union, and the Radio Officers Union, while the transport workers have an Administratives Section. The Engineering Group includes the Electrical Power Engineers, the Association of Engineering and Ship-

building Draughtsmen, the Engineer Surveyors Association, and the Association of Supervisory Staffs and Engineering Technicians. Other craft Unions admit foremen as members, union members sometimes declining to work under non-union foremen. In Printing and Composing, room heads, correctors, etc., are embraced by the Unions. The Journalists Union is open to editors but not owners. Many craft Unions in other industries include foremen and supervisory grades.

"The Association of Supervisory Staffs and Engineering Technicians was formerly a small association of foremen, but changed its title and broadened its basis last year. Its membership has since quadrupled, and is now 10,000. It covers supervisory grades, technicians, planning and production engineers, and personnel managers in engineering, shipbuilding, and transport. It maintains that these are workers and not owners, and have the same right to unionize as the employees they supervise; and it has won recognition from varied types of employers. It feels that a new drive is needed to unionize managers in mass industry who have hitherto not been very "union conscious," as well as artisan foremen and semi-professional technicians. The Union says that it is establishing relations with the National Foremen's Union of America, and hopes to send delegates to the latter's Congress.

Appendix

The Constitutional provisions of the International and National Unions which include references to foremen are summarized in the following pages. Excluded are the recently organized foremen's unions as well as constitutional revisions which have been made during the last few months (see page 2). The unions are listed as follows:

[fol. 259] (a) Nine unions which are composed solely of persons of foremen and supervisory rank.

(b) Twenty-nine unions which permit, and in some cases require, membership of foremen in the same union as production workers.

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[1] Copy of a letter dated March 25, 1943 from British Information Services, An Agency of the British Government, Information Div.

(c) Thirty-seven unions which exclude foremen and general supervisors, although working foreman and minor supervisors are admitted in some instances.

The constitutions of the remaining International and National Unions (approximately 120) do not mention foremen. Presumably most of these exclude foremen from membership although some of their locals may include foremen in the absence of a constitutional provision debarring them.

Unions Composed Solely of Foremen and Supervisors [1]

National Maritime Engineers' Beneficial Association (CIO)

Organized in 1875.

Composed of licensed or commissioned marine engineers on vessels, boats, barges, scows, or any other craft flying the American flag, propelled by steam, gas, oil, electricity, or machinery of any kind.

National Organization Masters, Mates, and Pilots of America (AFL)

Organized in 1887.

Composed of officially licensed masters, mates and pilots of lake, bay, river, and ocean steamers and sailing vessels, and operators of motorboats.

United Licensed Officers of the United States of America (IND)

Organized in 1933. Successor of the Neptune Association organized in 1912, and the Ocean Association established in 1918.

Composed of licensed deck and engine-room officers on vessels.

Railroad Unions [2]

Railroad Yardmasters of America (Unaffiliated)

Organized in 1918.

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[1] See page 2 for recently established foremen's unions.

[2] To the extent that the engineers are in a supervisory position over the fireman, the Brotherhood of Locomotive Engineers could be included. Since conductors have supervisory responsibility over the brakemen and also have final responsibility over all the train service, the Order of Railway Conductors could also be considered a foremen's union.

Composed of general yardmasters, assistant general yardmasters, yardmasters, assistant yardmasters, and station masters.

American Railway Supervisors Association, Inc. (Unaffiliated)

Organized in 1934.

Composed of supervisors as defined by the Interstate Commerce Commission.

Government

National Association of Master Mechanics and Foremen of Navy Yards and Navy Stations (AFL)

Organized in 1905.

Composed of "the supervisory force of Government navy yards and naval stations."

National Association of Postal Supervisors (Unaffiliated)

Organized in 1908.

Composed of "the supervisory grades of the United States Postal Service * * * All Classified postal employees above the clerk-carrier grade and postmasters promoted to that position from the classified service."

National League of District Postmasters of the United States (Unaffiliated)

Organized in 1894.

Composed of postmasters and assistant postmasters of third and fourth-class post offices.

National Council of Officials of the Railway Mail Service (Unaffiliated)

Organized in 1922.

Composed of superintendents, assistant superintendents, chief clerks, assistant chief clerks and clerks in charge of sections of the United States Railway Mail Service.

Foremen's Locals

In addition to the above national organizations are a number of local unions which are composed solely of supervisors, as indicated below. There are probably addi- [fol. 261] tional foremen's locals of which the Bureau has no present knowledge.

Textile Foreman's Guild, Paterson, New Jersey, Local of the Textile Workers Union (CIO)

Organized several years ago.
"Composed only of technicians, including technicians who have the right to hire and fire."

Supervisors of Mechanics (AFL Railway Labor Department)
Organized 1940.
Composed of supervisors in railroad repair shops.

Unions Which Include Both Foremen and Production Workers

American Federation of Labor

Barbers, Hairdressers and Cosmetologists' Int'l Union of America, The Journeyman

Any competent journeyman barber is eligible who is actively engaged at the trade. An employer is construed to be any person or persons who either owns, manages or operates a barbershop. A beneficiary member becoming an employer is not entitled to vote or sit in meetings and is ineligible for office.

Blacksmiths, Drop Forgers and Helpers, In'tl Brotherhood of

Any Blacksmith is eligible, "employing not to exceed three blacksmiths."

Bookbinders, Int'l Brotherhood of

All bindery foremen are eligible and must be members.

Bricklayers, Masons and Plaster-s Int'l Union of America

"Foremen shall be practical mechanics and be members of the union."

Carpenters and Joiners of America, United Brotherhood of

When a member contracts work or becomes a foreman, he must comply with union rules and hire none but members. To be eligible for office, members must be working at the trade.

Cigarmakers' Int'l Union of America

Foremen eligible.

Fire Fighters, Int'l Association of

Jurisdiction apparently covers all employer in fire houses, but one clause refers to the fact that local unions may drop from their active membership all members who may hereafter be promoted to the supervisory grades and, further, that such members may become honorary members.

[fol. 262] *Hatters, Cap and Millinery Workers' Int'l Union, United*

Foremen and foreladies shall not be eligible to serve as officers, by implication they remain members.

Lathers, Int'l Union of Wood, Wire and Metal

Includes foremen, superintendents.

Leather Workers' Int'l Union, United

Membership covered in general terms. Piece workers shall not be permitted to work any help of any kind. Retiring cards may be issued to foremen who have four or more journeymen under their charge.

Lithographers of America, Amalgamated

Membership includes foremen.

Machinists, International Association of

Any member of the local lodge who has been appointed general foreman or superintendent may be transferred to the Grand Lodge, or take out a retiring card. Foremen remain active members.

Molders and Foundry Workers Union of North America, Int'l

Foremen may become members but no such members shall be eligible to election or to serve as a delegate to the convention or as delegate to any affiliate organization, who is an employer, foreman, or assistant foreman. Active members who become foremen or employers may be granted an honorary card by local.

Painters, Decorators and Paperhangers of America

Foremen may be members.

Paper Makers, Int'l Brotherhood of

Withdrawal cards may be issued to those who become superintendents. Foremen may remain members.

Photo-Engravers Union of North America, Int'd

Foremen must be members.

Plasterers' Int'l Association of the United States and Canada

Operative

Foremen must be members.

Potters, National Brotherhood of Operative

A general foreman or superintendent may retain membership by paying dues and assessments. He should not attend meetings or hold office in the organization, but shall be en- [fol. 263] titled to benefits in time of trouble.

Printing Pressmen's and Assistants' Union of North America, Int'l

Foremen are members.

Stereotypers and Electrotypers' Union of North America, Int'l

Foremen and assistant foremen are members.

Switchmen's Union of North America

Includes "yard masters."

Congress of Industrial Organizations

Glass, Ceramic and Silica Sand Workers of America, Federation of

"No member holding a position with the company as foreman shall be eligible to become a candidate for or hold any International Office." May hold local office subject to approval of International Executive Board.

Mine, Mill and Smelter Workers, Int'l Union of

Whenever a member of a local union shall become a superintendent, general foreman, or other executive, he

shall lose all rights to a voice vote, or seat in the meetings of his local union, but may continue his membership as a beneficiary member, or upon application to the Financial Secretary, he may be granted a withdrawal card.

Stone and Allied Products Workers of America, United

"Persons employed exclusively in a managerial, executive or supervisory capacity shall not be eligible to membership. This shall not affect the status of foremen who are already members of the union."

Unaffiliated

Mine Workers of America, United

"Int'l Executive Board may, in its discretion, provide rules and regulations upon which supervisory and other employees may be admitted to membership."

Railroad Signalmen, Brotherhood of

Foremen and inspectors admitted. Supervisory employees of higher rank granted withdrawal cards.

Railroad Trainmen, Brotherhood of

Jurisdiction covers: "In road service—Conductors, Assistant Conductors * * *" "In yard service—Yard master, Assistant Yard master, Yard Conductor, Foremen * * *"

Train Dispatchers, American Association of

[fo. 264] Superintendents become associate members.

Typographical Union, Int'l

"All persons performing the work of foremen or journeymen, at any branch of the printing trade, in office under the jurisdiction of the Int'l Typographical Union, must be active members of the local union of their craft and entitled to all the privileges and benefits of membership."

Unions Which Exclude Foremen

The line of demarcation between ranks of supervisory persons is, of course, difficult to define in a general way. In many of the unions cited below "Working Foremen," "gang leaders," etc., retain their membership. In general

the exclusions pertain to those who have the power to hire and discharge.

American Federation of Labor

Asbestos Workers, Int'l Association of Heat and Frost Insulators and

All persons (except employers, agents or shop foremen) at work (as mechanics or improvers) are eligible. Foremen must take out withdrawal cards but may retain membership as far as death benefits are concerned.

Coopers' Int'l Union of North America

Employers or foremen who have authority to hire and fire who work at the bench in union shops "shall be enrolled by the local unions (but not admitted) as members."

Glass Bottle Blowers' Association

"Members who become managers and foremen with authority to discharge must, in all cases, take out withdrawal cards."

Glass Workers' Union, American Flint

Working foremen eligible. Others are not.

Longshoremen's Association, Int'l

Working foremen eligible.

Luggage, Belt and Novelty Workers' Union, Int'l Ladies Handbag

A union member who becomes an employer, foreman or manager, with the right to hire and fire, shall have his membership in the Union terminated automatically.

Maintenance of Way Employees, Brotherhood of

"All employees • • • below the rank of supervisor in the Track Department and general foremen in the Bridge [fol. 265] and Building Department • • • are eligible." (Standard agreement)

Meat Cutters and Butcher Workmen of North America, Amalgamated

In packing houses, " • • • bookkeepers, office clerks, timekeepers, foremen other than working foremen, and

managers of packers, branch houses are exempt." In retail stores, supervisors accepted, but may not be on committees negotiating wages or working conditions with employers.

Polishers, Buffers, Platers and Helpers' Int'l Union, Metal

Any man working at any branch of the business the same as the workingman under him should be a member of the organization. No person who is an absolute foreman, superintendent or manager can be admitted to membership. This is defined as one who has the right of hiring or firing. Working foremen may not be shop stewards.

Retail Clerks' International Protective Association

Restricted to those actively engaged in handling and selling merchandise. Persons operating or managing, owning or leasing, where there are no clerks employed, are eligible as non-active members. Cannot attend meetings, have no voice or vote.

Stonecutters' Association of North America, Journeymen

All foremen who are journeymen workers and if working with the tools must be members. By implication general foremen are excluded.

Street and Electric Railway and Motor Coach Employees of America, Amalgamated Association of

No manager, superintendent, foreman or other officers of a bus company, having rules to enforce, can be a member. Certain minor officials, such as starters, dispatchers, timekeepers, working with fellow workers, may retain membership but cannot attend meetings.

Tobacco Workers' Int'l Union

No superintendent or general foreman is eligible for membership.

Congress of Industrial Organizations

Architects, Engineers, Chemists and Technicians, Federation of

"May admit to membership related office and supervisory workers in establishments where FAECT members are employed," but "no persons whose interests are deemed to

[fol. 266] be with the employers or administrators of public institutions as against the employees shall be eligible for membership, such eligibility to be determined by the local unions."

Automobile, Aircraft and Agricultural Implement Workers of America, United

"No application shall be accepted from the one designated as the head of a department, directing company policy or having the authority to hire and discharge workers. Members of the union who are promoted to such positions shall be issued a withdrawal card. Members promoted to minor positions where they work with their follow workers and do not have the power of discipline by hiring or discharging employees may retain their membership at the discretion of the local Union."

Clothing Workers of America, Amalgamated

"No foreman or forewoman or any other person acting on behalf of an employer and having the power to hire or fire shall be eligible for membership."

Communications Association, American

"Employers of communications workers and the agents of such employers including executives, officers, attorneys, general managers, and superintendents, investigators, and persons who shall have authority to hire and fire, not eligible for membership."

Federal Workers of America, United

"Elected officials, cabinet officers, members of the judiciary, department heads, or officials having major responsibility for hiring or dismissal, or for personnel matters" not eligible for membership.

(LS 43-5160)

Gas, Coke and Chemical Workers, United

"No person having the power in the management of any plant or factory, to hire or fire shall be eligible for membership. Persons having supervisory power, excluding the right to hire and fire, shall be eligible to membership subject to the approval of the local union."

Hosiery, Workers, American Federation of

(Branch of Textile Workers Union of America)

"Any worker engaged in the manufacture of hosiery excepting those in a supervisory capacity shall be eligible [fol. 267] as an applicant for membership."

Longshoremen's and Warehousemen's Union, Int'l

Admits working foremen.

Marine Cooks' and Stewards' Association of the Pacific Coast

Chief stewards, comparable to working foremen, admitted to membership.

Marine and Shipbuilding Workers of America, Industrial Union of

"Foremen and supervisory or managerial employees of rank equal to or higher than foreman shall not be eligible for membership in the union."

Newspaper Guild, American

"No person whose interests lies with the employer as against the employee shall be eligible."

Office and Professional Workers of America, United

"No person whose interests are deemed to lie with the employer as against the employees shall be eligible for membership."

Oil Workers Int'l Union

"When a member in good standing is promoted to a position outside the jurisdiction of the local agreement in effect at the plant where he is working, he will be given an honorable withdrawal card upon request." Agreements customarily exclude supervisory workers, although working foremen may be included.

Retail, Wholesale and Department Store Employees of American, United

"No person shall be eligible to membership in any local union who shall be employed in any capacity which would

require him to perform duties inconsistent with labor union membership * * *"

Rubber Workers of America, United

"Plant superintendents, general foremen, shift foremen and supervisors, as defined by the local union, shall not be eligible for membership."

Shoe Workers of America, United

"Any member accepting a position as foremen, assistant foreman, forelady, assistant forelady or superintendent or any other persons who have the right to hire or discharge must immediately apply for and may be granted a withdrawal card."

[fol. 268] "The matter of working foreman, forelady, superintendent etc., may be handled by the local union as their conditions and best judgment warrant. Local unions have full power in this matter."

State, County and Municipal Workers of America

"Elective officers, members of commissions, and department heads" not eligible for membership.

Steelworkers of America, United

Supervisors without right to hire and fire may be members subject to approval of the local and the International Executive Board.

Textile Workers Union of America

"No worker having the power to hire or fire shall be eligible for membership; provided that charters may be granted to locals composed of technicians, including technicians who have the right to hire and fire. Workers having supervisory power, other than the right to hire or fire, shall be eligible to membership only with the approval of the Executive Board of the local union to which they apply for membership."

And Toy Workers International Union, United Paper, Novelty

"No foreman or forewoman or any other person acting on behalf of an employer and having the power to hire or fire shall be eligible for membership."

Transport Service Employees of America, United

"No application shall be accepted from anyone who has the authority to hire or discharge. Where members of this International Union are appointed to such positions as described above, they shall withdraw membership in the local by taking out a withdrawal card.

"Members appointed to supervisory positions where they work along with their fellow workers and do not have the power to hire and discharge employees, may retain their membership in the local, if said membership is approved by a majority of the local."

Transport Workers Union of America

"No person having the power to hire or fire shall be eligible for membership. Persons having supervisory power excluding the right to hire and fire, shall be eligible to membership subject to approval of the local union or of [fol. 269] the section and of the local executive board."

Unaffiliated

Brewery, Flour, Cereal and Soft Drink Workers of America, Int'l Union of

"Members who are advanced to the position of foreman cannot hold membership in the Int'l Union providing they have the right to hire and fire and they do not perform the regular work of a workingman. First men in the various departments must belong to the union."

Firemen and Enginemen, Brotherhood of Locomotive

Foremen who act as hostlers and receive hostlers' pay are eligible to membership (Engine hostlers or engine dispatchers are persons who actually handle and are responsible for the care of locomotives.)

MEMORANDUM FROM DIRECTOR OF ALABAMA DEPARTMENT OF LABOR

State of Alabama

Department of Labor

Montgomery

Alabama

Great seal

To Labor Organizations and Labor Unions Existing in Alabama:

Section 7 of Act No. 298 of the 1943 Legislature of Alabama (The Bradford Act) requires that:

"Every labor organization functioning in the State of Alabama and having twenty-five or more members in any calendar year shall annually on or before February first in the next succeeding calendar year file with every member of their respective labor organizations and with the Director of the Department of Labor a report in writing showing the facts hereinafter in this section provided as of the close of business on the thirty-first day of December next proceeding the date of filing. Such report shall be filed by the Secretary or business agent of such labor organization and shall show the following facts: (1) The name of the labor organization; (2) the location of its principal office and its offices in Alabama; (3) the name of the president, secretary, treasurer and other officers, and business [fol. 270] agents, together with the salaries, wages, bonuses, and other remuneration paid each, and post office address of each; (4) the date of regular election of officers of such labor organization; (5) the number of its paid up members; (6) a complete financial statement of all fees, dues, fines, or assessments levied and/or received, together with an itemized list of all disbursements, with names of receipients and purpose therefor, covering the preceding twelve (12) months; (7) a complete statement of all property owned by the labor organization, including any monies on hand or accredited to such labor organization, which said report shall be duly verified by the oath of the president, secretary, or some other regularly selected and acting officer of such labor organization having knowledge of all the facts

therein stated. It shall be the duty of the Director of Labor to cause to be printed and to make available to the public forms for making such report. At the time of filing each such report it shall be the duty of every such labor organization to pay the Director of Labor an annual fee therefor in the sum of two dollars. The Director of Labor shall receive, file and index the reports provided for in this section of this Act. The records provided for herein shall be made available by the Director of Labor in his office to the Governor of Alabama for examination. It shall be unlawful for any fiscal or other officer or agent of any labor organization to collect or accept payment of any dues, fees, assessments, fines or any other monies from any member while such labor organization is in default with respect to filing the annual report required in this Section."

A labor organization subject to this provision is defined by Section 2(a) of the Bradford Act as follows:

"'Labor organization' or 'Labor Union' shall mean every organization, association, group, union, lodge, local, branch, or subdivision thereof, whether incorporated or not, having within its membership employees working in the State of Alabama, organized for the purpose of dealing with employer or employers concerning hours of employment, rates of pay, or the tenure or other terms or condi-
[fol. 271] tions of employment, but such term or terms shall not include any labor organization or labor union the members of which are subject to the Act of Congress known as the Railway Labor Act."

If you are subject to the statute quoted above, this form and the sheets attached are provided for your convenience in reporting to the Alabama State Department of Labor and for furnishing copies to members of your union. If additional report sheets are desired, they may be secured by applying to the Director of the State Department of Labor, Montgomery, Alabama.

W. Emmett Brooks, Director Department of Labor.

The report must be completed and filed with the Director of the Department of Labor, Montgomery, Alabama, on or before February 1, 1944. The report will be regarded

as confidential and subject to inspection only by the Governor of Alabama.

State of Alabama

Department of Labor

Montgomery Form A

Alabama

Great Seal

Form for annual reports by labor organizations or labor unions.

Instructions: Read carefully the items included before completing this form. Give complete and accurate information. Entries should be typed, printed in ink or written plainly in ink. The completed report must be filed with the Director of the Department of Labor on or before February 1, 1944, and by that time copies must be furnished to every member of the labor organization or labor union reporting. If the space provided for insertion of information under any item is insufficient, supplementary sheets should be attached.

1. Name of the labor organization or labor union reporting .....

2. Address .....

[fol. 272] 3. If the labor organization or labor union reporting has branches or subdivisions in Alabama, list the names and addresses of these branches or subdivisions.

.....

.....

.....

3-A. Number of paid-up members.

4. In the columns of the table below insert the name of the President, Secretary, Treasurer, Business Agent and other officers of the labor organization or labor union who served during the calendar year of 1943, their post office addresses,

and the total of salaries, wages, bonuses and other remunerations paid each during the year by the union.

Title of office	Name of Officer	Post Office Address	Salaries wages, etc. received in 1943.	Period during 1943 covered by salaries, wages, etc. From	To

5. In the columns of the table below insert the titles of offices in the labor organization or labor union and the dates of regular elections to these offices. Include all offices enumerated in item 4 above.

Title of Office	Dates regular elections to office are held

[fol. 273] 6. In the columns of the table below insert the sources of receipts (such as fees, dues, fines, assessments, etc.), to the labor organization or labor union and the total amounts of money collected from these sources during the calendar year of 1943. It is not required that individual collections be detailed.

Receipts source	Amount collected from source during 1943
Total receipts during 1943	

7. With this form have been transmitted you several copies of Form B. On Form B list the following information concerning each disbursement made by the labor organization or labor union during the calendar year of 1943: (1) date of payment; (2) recipient of the disbursement: (3) the purpose for which the disbursement was made; and (4) the amount expended. If the number of sheets of Form B provided for your use is insufficient, additional copies of the form may be secured by request to the Director of the Alabama State Department of Labor, Montgomery, Alabama, or either of the offices of the Department located at Birmingham and Mobile. When you have completed your listing of disbursments, attach it securely to this form.

8. In the columns of the table below insert a complete statement of the values of all types of property owned by the labor organization or labor union on December 31, 1943. Include the values of such real and personal properties as cash on hand, accounts and notes receivable, bonds and other investments, land, buildings, equipment, supplies, etc.,

Property	Value
. . . . .	
. . . . .	
. . . . .	
Total property values	
. . . . .	
. . . . .	
. . . . .	

[fol. 274] Total property values.

9. This report should be accompanied by a filing fee of two dollars ($2.00), which should be remitted by check or money order made payable to the State of Alabama.

I hereby certify that the information given by me, both in this report and in all required attached supplementary

material, is true and complete to the best of my knowledge and belief.

Signed —— ——.
Secretary-Business Agent

Sworn to and subscribed before me this — day of —— 194-.

_____

_____

Title of Officer Administering Oath.

Form B. State of Alabama

Department of Labor.

Montgomery

Form for Annual Reports of Disbursments by Labor Organizations or Labor Unions

Alabama

Great Seal

1. Name of the labor organization or labor union reporting ——. ——.

2. Address —— ——.

Page of listing —.

Date	Recipient	Purpose	Amount
			$——

This form is to be used in connection with item 7 of Form A:

[fol. 275] PLAINTIFF'S EVIDENCE

W. O. HARE called as a witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wilkinson:

My name is W. O. Hare, I am connected with the Alabama State Federation of Labor in the capacity of Secretary-Treasurer. I have been in this position for approximately

thirteen years, continuously. I am a member of Structural Iron Workers Local No. 92, Birmingham, Alabama and have been for the past thirty-three or four years. I have been continuously active in organized labor movements, in the State of Alabama for about twenty-five years. In my work I keep in close contact with the various local unions affiliated with the Alabama State Federation of Labor. There are approximately 375 local unions affiliated with this department, representing various crafts, including machinists, boilermakers, blacksmiths, carpenters, city firemen, in fact there are 108 Internationals that can affiliate and most of them have locals in the state looked after by me and other officers, affiliated with the Alabama State Federation of Labor. These Internationals exercised jurisdiction over the different crafts or trades. These crafts or trades have one or more local unions. I have been very active in the organized labor movement in Alabama since I started serving the State Federation of Labor.

I was in attendance there at the Legislature at the time The Bradford Bill was passed and also prior to its passage.

The following question was asked the witness by counsel for plaintiffs:

"Was there any hearing by the Committee on this Bradford Act, as passed?"

Counsel for defendants objected on the grounds separately and severally, that it was immaterial and irrelevant, that it is an attempt to impeach the declaration of policy of the Legislature of Alabama as stated in the Act by oral proof of the proceedings of the Legislature. It is highly incompetent.

That the journals and records of the Legislature are the best evidence of any Committee action thereon; and that such records are not subject to impeachment by oral testimony.

[fol. 276] Counsel for plaintiffs stated that he proposed to show by this witness that the Legislature never held a hearing on the Bill, and made no finding of facts. The purpose being to show that the Legislature made no investigation or finding as to the policy declared in the act.

They, the Alabama State Federation of Labor asked to be heard on it but were told by the Chairman that the Committee was not having any hearing on it. Counsel stated also to the Court that he assumed the Court takes

judicial knowledge of the Journals of the Legislature. The court replied that it did.

The Court sustained the objection by unanimous vote of the Court.

Counsel for plaintiffs duly excepted to said ruling. Continuing the witness testified:

I am fairly familiar with the procedure followed by the local labor organizations affiliated with the Alabama State Federation of Labor with reference to calling and conducting a strike. It is generally the practice of local unions, in particular crafts or trades to vote on the question of whether a strike will be called or not. If the majority of the members of the local unions vote in favor of striking for higher wages, better working conditions or shorter hours, it has not been and is not, the policy for the local union to obtain the sanction of anybody else before it requires its members to obey a strike order that is called.

I am familiar with the conditions prevailing in the industries pretty well over Alabama. It is true that there are numerous businesses and industries in Alabama in which no one craft, or trade, has the majority of employees. That is the general condition throughout the state. The carpenters, for instance, are in the minority in a plant or business, also the painters. In other words, the way that business is organized and conducted in Alabama, the general rule is that no one union has the majority of the membership in that business or plant unless it is an industrial union and we don't have those. The State Federation of Labor has no industrial affiliation. This refers to the American Federation of Labor, but not the Congress of Industrial Organizations.

It is the purpose, plan and intent of the local unions, affiliated with the Alabama State Federation of Labor, to [fol. 277] continue the policy they have pursued, with reference to the calling and conducting of strikes, unless required to abandon that policy by the Courts. I have attended many discussions among labor circles since the Bradford Act was allegedly enacted, and this Act has been the subject of wide discussion. I do not know of any other condition that exists than the Bradford Act that will cause labor to modify or change its method of calling and conducting strikes. In other words, we propose to go ahead in the

future, as in the past, unless the Act itself requires some modification or change of our procedure.

The following question was asked the witness:

"I will ask you if you know whether or not the Bradford Act has affected or exerted any influence, on labor throughout Alabama, on locals connected with the Alabama State Federation of Labor?"

Counsel for defendants objected on the ground of its being a mere conclusion of the witness, calling for incompetent, irrelevant and immaterial testimony, not a matter on which expert testimony and opinion is admissible.

The Court asked Counsel for plaintiffs what the expected answer was, to which counsel replied that it would be in the affirmative, and what the effect is and what the witness has found it to be; to show the necessity and desirability of an adjudication that the various provisions in question and averred in the Bill, that the Bradford Act is the subject of wide discussion, and has done a lot of that to men who are employed, also that the witness is called on from time to time by different locals to go to different plants and to different meetings of the local to try and explain the Act to them, the effect of it in keeping people agitated, and it is difficult for labor to keep up production; the purpose of showing desirability is a matter of public necessity for an adjudication on the Act as a whole, and these various provisions involved, and so forth.

It was the unanimous ruling of the Court that the objection be sustained, to which counsel for plaintiffs duly excepted.

There being no cross-examination, the witness was excused.

[fol. 278] B. E. Jones called as a witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wilkinson:

My name is B. E. Jones, and I live at 2572 Twenty-Ninth Street West in Birmingham, Alabama. I have lived in the Birmingham District about thirty years. I am a member, in good standing of Local 103 United Brotherhood of Car-

penters and Joiners of America, and have been such for approximately 25 years. I am employed at present by J. F. Holley, a contractor, as superintendent, and have been for the past fifteen years. During that period, however, I have worked for Mr. Holley part of the time and for others part of the time, but my duties, as superintendent, have been the same with each employer, also my authority Mr. Holley does general construction work and repair work. There are ten or fifteen different crafts involved in his work, including carpenters, structural iron workers, machinists, brick masons, sheet metal workers, cement finishers, plaster-s. This is true in regard to the other contractors I have worked for. I have full charge over the job and the men, and have authority to employ the men and discharge them. That also applies to the foremen on the job. When we start a job, the first thing we have to do is to organize the job, obtain the foremen and the men; that is my job, to organize the job and prepare to execute it according to the plans and specifications. They give me authority to produce results and look to me for results. I am furnished with blue-prints and specifications for the job. I go over these blue-prints and specifications provided by the engineers and draftsmen and find out what is necessary to be done. The first thing to do when organizing the job is to obtain foremen, which is my job, we have to have a foreman for each group of craftsmen employed. In other words, if we employ carpenters, we have to have a carpenter foreman, and the same applies to electricians and all the other crafts employed on the job. It is one of my duties to decide which men are to remain on the job and which are to be relieved in connection with the job.

In regard to the materials that are used on the job, sometimes they are procured through the office and sometimes they are purchased there through the job office. Personally, I have nothing to do with the purchase of the materials. The first time I am brought into contact [fol. 279] with the materials is when they are brought there and delivered on the job. However, on rare occasions I make a few little small purchases. I have the right to reject the material that is brought there and delivered on the job. This is the custom throughout the district, it is practically uniform. I reserve the right to reject the material if it is developed that it was manufactured or

processed by non-union labor. That is also the general practice throughout the district, so far as specifications are concerned. It is my plan and purpose to continue this procedure, unless required to do so by the Bradford Act. I do not know of any fact, condition or circumstance that would bring about any modification of that operation other than the Bradford Act. Local Union 103 of the Carpenters Union here are familiar with the method I have just described that the superintendents follow in handling the job.

At this point the following question was asked the witness; Has there been any complaint on the part of the Local 103 or any of the other locals, of the Carpenters Union, about the way and manner and method in which the superintendent handles the job?

Counsel for defendants objected on the ground that it was not shown that the witness is the one with whom the complaints would be lodged, not shown the witness is under way to receive complaints, and not shown whether he would know they were complaints or not, this is an issue entirely foregin from anything in this case, highly incompetent and immaterial, calls for hearsay testimony of the vaguest and most indefinite sort.

Counsel for plaintiff here stated that the purpose of the question was that it was averred in here that these superintendents have the support of these unions, that they will assist and aid them in maintaining their position, and their method of handling the job meets with the approval of the locals, and that from that the Court can at least infer they would support them in that position, that this witness is a member of the local and certainly ought to know if there is a complaint.

Counsel for defendants remarked that the witness was asked to testify as to the complaints of other locals.

It was the unanimous ruling of the Court that the objection would be sustained, to which counsel for plaintiffs duly excepted.

[fol. 280] Witness testified further that no complaint had ever been made by Local 103, of which he was a member or any other craft in the Birmingham District, about the way and manner in which the job just described has been handled.

Counsel for plaintiffs asked the witness if any complaint had been made to his knowledge, by Local 103, or any of the

other crafts in Birmingham about the way the other superintendents handled the jobs.

Counsel for defendants here renewed his objection on the ground that this witness is not shown to know what complaints are made, or if any were made, except as a member of Local 103. It calls for incompetent, immaterial and hearsay testimony.

It was the unanimous vote of the Court that the objection be sustained, to which ruling counsel for plaintiffs duly excepted.

Witness testified further that he had been a member of the Carpenter's Union for 25 years, which union later became affiliated with Local 103, in fact, about 12 or 14 years ago.

During the time that I have been a member of Local 103, the witness continued, this local has called strikes on jobs without obtaining permission, authority or assent of the other people that worked on the job.

I have attended meetings of this local frequently and regularly and have held the positions of president, secretary-treasurer, recording secretary-trustee—in fact all the offices in the local, and have been very active in this local. My present office is in the district council, which is representative of all the councils. The District Council is composed of all the locals in the district.

I do know that Local 103 plans and proposes to continue to call strikes of its members for higher wages, better working conditions and shorter hours when authorized by the vote of the members or rather majority of the members, without obtaining approval of any one who does not belong to Local 103, unless forbidden to do so by the Bradford Act. In other words, we contemplate no change in our method of calling strikes unless this Act requires a change.

Local 103, the Carpenters Union, members are employed in various and sundry industrial plants, in this district. Our members so employed in this district are not in the majority, but are in the minority. Members of Local 103 are engaged in the carpentering and joining trade. I do [fol. 281] not know of any plant or business in the district in which members of Local 103 constitutes a majority of the regular employees. In such plants where we are in the minority, we have no control over the other employees in that plant or business who do not belong to our local, in fact, we exercise no jurisdiction over them at all, except the carpenters belonging to our own local.

In connection with the performance of my duties as superintendent, I am frequently confronted with the proposition as to whether or not I will allow material to be used on the job that is produced by non-union labor. This matter comes up every once in awhile, and I am the one to make this decision. In my experience I have not as yet rejected any such material, but it has been done on other jobs, I have known of contractors being notified by labor organizations that they would not permit certain material manufactured by non-union labor to be used on the job.

There are other superintendents in this district who are members of Carpenters Local 103. This local admits to membership men who are superintendents and foremen, as well as journeymen. There is no discrimination in this regard. It is true that in the carpenters' trade and it quite frequently happens, that a man may be a foreman on one job, work at it a few weeks or months and complete it, and maybe the next job he takes up is that of journeyman. That is also true with respect to superintendents. I would say there are around 100 members of Local 102 who have served as superintendents and foremen and are so classified. It is my intention to continue my membership in Local 103, unless compelled to surrender it by the Bradford Act. There are some woodworking industries in this district in which all the employees are members of Local 103—there are no mixed organizations in there. When I mentioned awhile ago that our members were in the minority, I referred to industries in which mixed organizations had members working.

The witness testified on Cross-Examination as follows:

When our union or craft, votes to call a strike and we put out a picket line, it is immaterial to us whether other crafts affiliated with the A. F. L. respect that picket line or not. They certainly are not required to do so, however, it is usually customary for them to do so.

We are not supposed to use any material on the job that is [fol. 282] not gotten out by our craft. We control the lumber from the stump to its final use, and we refuse to use material produced by non union labor. This is in the by-laws of our union. Should the contractor that we work for buy material not produced by union labor the carpenters refused to use it. One man alone doesn't have the right to reject it. He can carry it back to his local and they

will take a vote on it. The superintendent can reject it on the job and stop it until the local passes on it, he can hold it up. Our object is to make better workmanship, better class of material and better standards of living. No, I wouldn't say I would call that a direct boycott or secondary boycott. I would just call it holding up our working rules and the constitution. That is a policy of the union. We are supposed, according to our constitution, to uphold our membership and brother workers. I wouldn't exactly say it would be for the purpose of forcing this lumber producer to use union labor. He can do as he pleases.

In reply to question asked by the Presiding Judge, witness replied that the question of nails had never come up with his organization, as to where they came from or who made them, only the lumber materials.

The witness testified on Redirect Examination as follows:

The nails used by the carpenters are produced by steel workers. The Carpenters Union has no jurisdiction or control over what is produced by the steel workers.

Whenever a picket line is established, all members of Local 103 are required to respect that picket line, and it is optional with all other crafts as to whether they respect it or not, however, it is customary, in a great majority of cases for all crafts to respect it. No other craft, other than Local 103, however, has any control over a picket line established by Local 103.

The witness testified on Recross-Examination, as follows:

We have no record of our union ever having called a sympathetic strike, in sympathy with the members of some other union, but on some occasions other unions have done so.

The witness testified on Redirect Examination, as follows:

Our International Organization is known as the United Brotherhood of Carpenters and Joiners of America. That is the parent body to which all these locals belong. The Alabama State Federation of Labor and the International body are aiding and assisting us in maintaining the views that I have just expressed.

[fol. 283] The witness testified further, on examination by the Presiding Judge, as follows:

I am now acting as superintendent for J. F. Holley. We don't stay on any one job all the time. There are times

when work gets scarce and we have to drop back to the carpenter trade. I have been serving on this particular job only about three months as superintendent for Mr. Holley. I have worked for him about six years in all. Prior to my present job I was employed out here at the airplane factory as carpenter foreman. I was there seven or eight months. Prior to that I was with the Morgan Construction Company, as superintendent, at the air base. It is a requirement of the rules of our organization for carpenter foremen to be members of the union, superintendents are not. It has been the practice for the past year, at least, of Local 103 to refuse to work on materials that are not produced by union labor. It was not in the working rules until some time about a year ago; the rules that apply to members of the Carpenters Union such rules being formulated by the International Union. They set up the form and it is immaterial whether the local carries it out or not. The local can vote on it. The International can O. K. it, or rather, has to O. K. it before it can become a law. In other word, if we vote not to use anything but union made material, we have got to send it to the International and get an O. K. on it before we can enforce it. Such a rule was adopted by our local about a year ago and was okehed by the International Union. This rule doesn't say anything about strikes, it just says that no member will be permitted to erect material produced in a non union shop. I think that is the way it reads. That is the rule that was made by Local 103 and approved by the International. Since that has been the rule of 103, I don't know of any members of the local, in an organized way, refusing to work on any non-union materials. Most of the plants are now on government work, and, in case of war, we overlook those things and don't try to enforce them on account of delaying the work. I don't know of any jobs going on at this time that the members of the Carpenters Union are working on that are not producing war material. Most of the cabinet jobs are now turning out boxes for the Army and Navy. If it wasn't for the war, we wouldn't be using anything but union produced material, as far as the carpenters are concerned. I do not know of any instance in which the Carpenters Union has voted a strike at any time since my connection with this local, because the employer attempted to [fol. 284] use non-union materials. I don't recall any per-

sons who have lately become superintendents or carpenter foremen since the Bradford Act was passed, who were not members of the union prior to the time of the passage of this Act. This local is still carrying in its membership carpenter foremen and superintendents, as it has all along, and still collecting dues. We have insurance in the local and the policy provides that if we allow same to lapse we will cease to be members in the union in six months, and if we resign from the union we lose all the advantages of the insurance and so forth. We have a right to hold up working on non union material until the local can pass on it, or rather, the International. This rule was enacted about a year ago.

The reason we desire a declaration as to whether this section here, about non-union materials being used, etc. Why we wanted to know whether this is constitutional or not; I didn't think—we would be allowed to ask for that if the Bradford Act was upheld. I just wanted to know where we stood. As to how soon we will want to know about that depends entirely on when the occasion arises. In union terminology a supervisor is a man in charge of a job, and that would be the superintendent. The foremen have supervision over men under them. We don't mention superintendents in there because a superintendent can be a member of any other union or no union at all, as far as the union rules are concerned. A superintendent is not required to be a member of the labor union, but foremen are. You have got to have foremen on the job. The foremen must be a member of the craft union that does the kind of work he is engaged in. Under foremen come journeymen. Apprentices are not qualified to become foremen, generally it is a journeyman carpenter that is made a foreman. An apprentice has to serve four years before he can be a journeyman proper. The point we want to find—the point we are interested in is whether I, as a superintendent, can legally continue to be a member of the union, and whether other persons who are superintendents of construction jobs can lawfully be a member of the carpenters union and whether carpenter foremen can legally be members of the union. I might be superintendent on one job one week and the next job I go to I may be a carpenter foreman.

In regard to the insurance feature, it is not compulsory or optional. The International takes out that insurance

after you have been there a short time. It goes into effect [fol. 285] after one year and builds on up all during the years you stay there. A person don't have to take it out. It automatically goes into effect. There is no provision for a person dropping his insurance and getting a refund, or anything like that. There is no specific charge made for the insurance.

Continuing on Redirect Examination, the witness testified further as follows:

This insurance is one of the privileges of membership in the union and exists as long as you are a member in good standing. A certain portion of the dues is allocated to the International organization in the form of per capita tax and a part stays in the local treasury. Should we drop our membership in the Carpenters Union we lose the privilege of applying for admission to the Carpenters Home that is maintained by the International organization down in Florida. We also lose our other benefits, such as sick and accident benefits, funeral benefits and so forth, as well as the insurance.

The witness testified on Recross-examination as follows:

We are not given any option of whether we want this insurance or not. That is passed by a vote of all the members all over the country. They vote to pass a certain section this one was passed, which is the same as a pension. We have what we call a pension benefit that is voted for by every member in the International in the United States. That entitles us to so such pension per month, so much per capita goes to that fund, you can either take the money or go to the Home maintained in Florida.

As superintendent of a plant, I am subject to discipline by the Union of which I am a member, should I violate any of the union rules. There is no rule of the union preventing the hastening or hurrying up of a job, if requested to do so, for some reason, at least there is nothing in the rule about that. I don't recall that we have ever struck on account of other men in the plant not belonging to the union, but it has happened at other places over the country. We don't have to strike, but we could vote one.

The witness testified further on Redirect Examination as follows:

There have been occasions when we would notify the contractors that we would not use certain materials. I remember an instance here a few months ago where the contractor was notified by Local 103 that its members would not be allowed to handle materials produced by non-union labor. There was no strike occasioned by this, but I did [fol. 286] decline to allow the members to handle this material.

Whoever severs his connection with the union whatever the cause may be, loses all the privileges I have been talking about, such as the insurance, the pension, the right to apply for admission to the Home in Florida, the sick benefit and all that, whether he is the foreman, superintendent or what.

The witness testifying on further Recross-examination:

Nothing extra is paid for these benefits I have outlined. It was voted by the organization to set aside a certain amount of the amounts paid in for this purpose. It is all one amount, as he pays it, but a part of that amount is set aside for this purpose. We do not pay a certain or separate amount for those benefits.

The witness testified on further Redirect Examination as follows:

Our per capita tax is 75 cents per month per member.

Each member of Local 103 pays 75 cents a month to the International organization, or $9.00 per year. That takes in all these benefits and also the general expenses of the International Union. As I said before, if these 100 foremen and superintendents in our local are required, for any reason, to surrender their membership in Local 103, each of them lose all these benefits.

There is a foreman for each craft, that is employed on the job. In other words, the carpenters have a carpenter foreman, and the electrical workers have an electrical foreman. If we have over three men in a crew we have to have a foreman, but we can have as many men as we want to. We could have 25 men working under one foreman if we wanted to. The function or duty of a foreman is to see that the men do the work right and that the material is all right. He supervises the actual working of the men. If a man makes a mistake the foreman is the one that tells him to correct it, and if he puts in a defective piece of material it

is the foreman who is the one who tells him to remove it, as well as to tell him where to get his material and what material to use. The superintendent has no direct contact with the men, that is done through the foreman. The superintendent has the general superintendence of the job, and controls it through the foremen. In the carpenters union it is required that a foreman, that is, the man who has direct contact with the carpenters on the job, be a member of the ca-penters organization, otherwise the members of the union would not be allowed to work under him. That [fol. 287] has been the rule for a good many years.

The witness testified on further Recross-examination as follows:

In some cases these foremen work and in some they don't. I don't use any tools at all, but in some cases when we are short of men the foremen pitch in and help out. The superintendent doesn't usually do that.

The witness testified on examination by the Presiding Judge as follows:

There is no ground for conflict of interest upon the part of a superintendent in considering on the one hand his membership in a craft, who is working on the job, and on the other hand his interest in serving his employer. There is no conflict of that sort. I have never been at a point where I would feef, what I might call, torn between my employer on the one hand and the workmen on the other. If I should not allow the members of the local, who were working under me, to work with, or handle materials produced by non union labor, I would not be fearful that my employer would fire me. I would be only holding up my rights that he agreed to when he made it a union job. I wouldn't be subject to discharge, if I upheld my rights. I would say that in some of these plants some of the men in a supervisory capacity would feel, at times torn between loyalty to their employers and loyalty to their employees. This would probably happen when the man acting in a supervisory capacity was not in sympathy with the union. We have had occasions where non union men were sent out on the job and we couldn't get them to take them off, and, of course, as soon as it was reported to the business agent, who has authority to pull the job, all work would be stopped until the non union men were taken off. All this

doesn't happen very often because on each job practically all the men are sympathetic to the union. The superintendent had the right to fire anybody off the job that he thought proper, the employer himself would not do that, that is J. F. Holley, he would take it up with me. I have had that to come up in my work there, where the contractor decides that some particular worker was not capable, and then it is up to me and the worker to find out whether his discharge would be justified or not. Taking it all in all, I have been pretty successful in keeping my men on the job, working it out on an agreeable basis. There are times, however, when we are changing from one operation to another when the contractor may come by and see some of the fel- [fol. 288] lows apparently loafing. I had that to happen just the other day. Of course he wants to fire the man because he is not doing anything. He just didn't understand the operation of the job, but, of course, I would show him where he was wrong. He would just walk up on the job and wouldn't know what we were doing. That is what I am trying to bring out. He is in the office most of the time and doesn't know how the operation is going along and when he comes up on the job and sees a man that is not busy, he thinks he is loafing. The man might have the appearance of loafing when he was not actually loafing. He might be waiting for somebody to get out of his way. As soon as I would show the contractor how things were he would agree with me.

Recross-examination continuing, the witness testified that he had never had the occasion to arise where an employee was suspected of embezzlement or stealing material off the job and the contractor demanded that he be fired, if the superintendent was not convinced of his guilt. If I were convinced of his guilt I would fire him off the job, but I would not conceal it from the employer. I have never had the occasion to arise where the employer desired to fire a man because he thought he was an habitual drunkard, and where I desired to retain him because he was a good union man.

Thereupon, the witness was excused.

T. L. Wilson, called as a witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wilkinson:

My name is T. L. Wilson, and I am president of the Carpenters Local Union No. 103. My present term of office dates back to last July. I have been a member of the United Brotherhood of Carpenters and Joiners of America for twenty-four years. During the time I have been a member of this organization, I have been active in its affairs.

Yesterday there was a reference made by Mr. Jones, a witness to sub-paragraph B of Section 7, which was adopted and printed subsequent to the printing of the National Constitution of the United Brotherhood of Carpenters and Joiners of America, which is attached to the Bill as Exhibit 6. That is in the working rules of the Jefferson County District of this organization for 1942-43.

(At this point the above mentioned subsection B of Section 7, was read into the record by counsel for plaintiffs.)

[fol. 289] The witness testified further that this rule was adopted in April 1943 as approved by the General Office of the organization, also that a letter exhibited by counsel for plaintiffs, dated April 26, 1943, from N. A. Hutchinson, First Vice President of the United Brotherhood of Carpenters & Joiners of America, addressed to Local 103, was received approving the above mentioned by-law or rule. The letter reads as follows: "This will acknowledge receipt of your letter of April 23, with enclosures. The provisions of Section 7, paragraph B, are approved, and we are in accord with the thought and intent of same. However, we must call your attention to the fact that under the present wartime conditions the government would not recognize that paragraph as being a part of your established conditions. Consequently you might not, at this particular time be able to enforce the same in its entirety."

The witness continued his testimony as follows:

On work under wartime contracts we do not attempt to enforce this provision, however, on work other than war time contracts, we do claim the right to enforce it.

At this point counsel for plaintiffs called the attention of the Court to paragraph C of Section 44 of the Constitution and laws of the United Brotherhood of Carpenters and Joiners of America, which is attached as an exhibit to the complaint, reading same to the court which paragraph refers to the local being required to pay to the general secretary the sum of $5.00 on each new member admitted except appentices and so forth.

The witness testified further as follows:

In addition to serving as president of the Local, I have also served as treasurer for several years, and have also served as business agent. In fact, I am business agent now. The duties of the business agent are many. He is a man that looks after the work for the men and tries to get work for them and tries to keep down any trouble between employer and employee. He is the one that deals with the contractors. It is the duty of the business agent to attempt to settle any disagreemnt between the men on the job and the contractor. In other words, if the contractor has a complaint he contacts me and I contact the men and vice versa.

I have seen these administrative bulletins sent out from time to time by the Department of Labor, which were attached to the agreement here.

[fol. 290] The following question was asked the witness by counsel for plaintiffs:

"Now, I wish you would give the Court the facts about the effect upon the functioning of the Local 103 since the adoption of the Bradford Act, and the circulation of these administrative bulletins that are in evidence here."

Counsel for defendants objected on the grounds of calling for illegal, incompetent and immaterial evidence and hearsay evidence; calls for conclusion of law, the question is too broad, it is not an inquiry of fact, witness is not shown to be competent to render an opinion, the question in its present form being objectionable for many reasons. Counsel asked the Court to be allowed to ask the witness a question on this subject before ruling on his objection, to which counsel for plaintiffs stated he had no objection. The question was "whether or not the union had complied with the Act; in other words, I want to make it clear to the court that he is asking the effects of the Bradford Act upon the operations of the union, when, at the same time, he has plead that this

particular union has not even endeavored, and has announced publicly to this court that it has not complied and not in position to testify as to the effect of the Bradford Act upon this union."

At this point counsel for plaintiffs stated that he was perfectly willing to stipulate in this record that the union had not complied with the Act and he had advised every one of them that he represented to disregard this Act, in its entirety, and that would be their plan and method of procedure until some court of competent jurisdiction makes a decision in this regard.

Counsel for defendants here stated that he wished to add the further ground of objection, that it is shown that the local 103 has not complied with the Act, therefore the effect of the compliance with the provisions of the Act would be a moot question, showing as a matter of fact that they have not complied with it and now he is asking the effect of the Act upon the operations of the union; that it is inadmissible on that account.

Counsel for plaintiffs here stated that what he wanted to show was the effect of the Act upon the functioning of the union and the people who are attemtping to build it and maintain it.

The Court voted unanimously to sustain the objection, to [fol. 291] which counsel for plaintiffs duly excepted.

Counsel for plaintiffs asked the witness the following question:

"I will ask you, since the Bradford Act has been put on the books if the officers and members of Local 103, and other local unions of the Carpenters and Joiners have stated that they wanted to get out of the union and were afraid to engage in union activities with the Bradford Act confronting it?"

Counsel for defendants objected to this question on the same grounds, separately and severally, interposed to the preceding question, without repeating them, and on the further ground that it called for hearsay testimony; it is not the criterion of the validity or constitutionality of the Act, it inquires with reference to matters which properly are addressed to the Legislature as to the wisdom of the policy of the Act and not as to the questions of the legality of the Act; and the inquiry is beyond the scope of any question to be determined by this Court.

Counsel for plaintiffs here stated that it shedded light on the question as to whether there is justifiable issue, and whether or not the union has such interest in this law as gives it a standing in court, to have a declaration regarding it.

The Court unanimously voted to sustain the objection, to which the plaintiffs' counsel duly excepted.

The following question was then asked of the witness:

"Mr. Wilson, I will ask you whether or not it is necessary and essential to the continued efficient functioning of Local 103 of the Carpenters union, and the other locals of the Carpenters union, for a declaration, or an adjudication to be had on the Bradford Act and its several sections that are under attack in this proceeding?"

Counsel for defendants interposed an objection to this question on same grounds as stated in objection to the preceding question in addition to calling for a conclusion of the witness.

By unanimous vote the Court sustained the objection, to which counsel for plaintiffs duly excepted.

The witness testified further as follows; on continued direct examination:

The Bradford Act, as interpreted by the Director of Labor at Montgomery, and as evidenced by the administra- [fol. 292] tive bulletins which are in evidence, have interfered with the functioning of Local 103 in some ways, causing a lot of trouble and discussion on the floors of the union, a lot of dissatisfaction, the members are even afraid to pay their dues into the organization, however, we are operating right on just the same. As I said before, I am the business agent of the Carpenters union in this district, we have seven locals under my jurisdiction and I visit one of them every meeting night, and I take care of the other locals just the same as I do 103. I keep in close and intimate touch with the affairs of each local in the district. The way this Act has interfered with the functioning of the union is that in some cases the members have refused to pay their dues, the- quit this immediately after this notice was posted in the shops, I mean by that this administrative bulletin. In other instances some of the officers have threatened to resign and not even sit in the meetings. Of course that disturbs the members very much. That has happened in several locals.

The following question was asked the witness by counsel for plaintiffs:

"Mr. Wilson, I wish you would tell the Court whether or not a compliance with all of the requirements of the Bradford Act, by Local 103, of the Carpenters, would interfere with the functioning of that body?"

Counsel for defendants objected on the ground that this question called for incompetent, irrelevant, immaterial and illegal testimony; called for conclusion of law, calls for expert testimony, question is indefinite, and stated that he did not know of any ground of objection it was not subject to.

By unanimous vote the objection was sustained by the Court.

Counsel for plaintiffs reserved an exception to this ruling and offered to show by this witness that it would interfere with and impair the functioning of this union, and the reasons why it would be true.

At this point the Presiding Judge asked the witness if he had made a study of this section 7 requiring labor organizations to file a report in writing, showing the name of the organization, location of its principal office, and quite a number of other things to which the witness answered in the affirmative. Witness also stated, in reply to question by Presiding Judge that he couldn't say just what all of the members did, but the majority of them quit paying dues be- [fol. 293] cause they were afraid they might get in jail for paying dues and holding closed shop—not exactly a closed shop but where all the workers belong to one organization—the law calls it a closed shop, and it would be a violation of the law, as the opinion rendered by the Attorney-General was that a closed shop would be in violation—or rather, contrary to public policy. I would think that about fifty per cent of the members that we had on June 29, 1943, quit the union on account of the Bradford Act. I do not mean by that that fifty per cent of our members quit on account of the Act, but I meant that fifty per cent of our members who have left since that time, for some reason or other, left on this account. I believe the main reason for them quitting paying dues was because they understood the Bradford Act made a closed shop unlawful. Some might have quit for other reasons but I believe that is the main one. They never stated any other reason to me. My judgment is based on

conversations I have had with these men that have quit. In some plants they posted these notices.

The witness testified on Cross Examination that the big plant of Bechtel, McCone & Parsons required the services of carpenters and carpenter foremen on June 29, 1943, but only had a very few at the present time.

Witness also stated it was true that carpenters moved about following big construction jobs, for instance, if a big job opened up in Pascagoula, Mississippi, some of the members of Local 103 would probably go there. They would not necessarily join a union there. They would probably go to Knoxville, Tennessee, or to New Orleans, and work at the Higgins Shipbuilding plant. As a rule they retain their membership in this local here. The witness stated he did not recall whether there was any other big operation going on here in June of 1943, other than Bechtel, McCone & Parsons, requiring the services of carpenters. Probably quite a few of our members have gone into the Army, but they are not dropped from the list in this event. The men heretofore referred to as quitting the union just dropped out, they were not transferred.

The witness testified on Redirect Examination that he was referring to residents of Jefferson County who are regularly employed in plants that operate all the time.

W. O. Hare, a witness, having been previously sworn, was [fol. 294] recalled for further Redirect examination, and testified as follows:

The witness was asked the question if he knew that the Bradford Act had interferred with the functioning of local unions of various crafts affiliated with the Alabama State Federation of Labor.

This question was objected to by counsel for defendants on the ground that it called for incompetent, irrelevant and immaterial testimony, hearsay evidence, calls for opinion or conclusion of the witness on a point of law, it seeks an expression from this witness, or evidence, with reference to the wisdom of the legislation, and not to show any fact which has any bearing on the determination of whether or not the legislation is reasonable and constitutional.

The objection was overruled by unanimous vote of the Court.

The witness replied that he knew that it had affected it all over the State.

Counsel for defendants moved to exclude the answer, which motion was granted by the Court, as not responsive.

The question was asked witness, by counsel for plaintiffs, as to what way the Bradford Act has interfered with the functioning of local labor organizations and labor organizations affiliated with the Albama State Federation of Labor, various crafts, not only the carpetners, but all the other crafts, affiliated with the State Federation. The witness replied that after the enactment of this Act there was great unrest in labor circles, there would be many different interpretations of it, they were talking all over the state to different attorneys about it and that caused a lot of unrest and slackage of work, and loss of production on the job, the workmen would stop and discuss it with one another, the effect it would have and so forth. Another effect was that they did not have paid officers in the locals, with few exceptions they are mostly voluntary workers, they work gratis, and they have had secretaries that have been serving voluntarily for years to quit and leave the local, and in time they will be entirely disbanded. There is a lot of time consumed in the deliberations of the various locals over this Bradford Act. I am supposed to visit all the locals in the state at least once a year, but I don't. I visit a large number. I don't recall any meeting since the enactment of this law, but what practically all of the time was consumed in the discussion of this Act. Another way in which this Act [fol. 295] is interfering is that we have had certain contracts that have been in existence for years, very fine agreements and since the enactment of the Bradford Act I have had firms to tell me they could not renew their contract because the Act would prohibit it and they had been so advised. Now, who advised it, I don't know, but we have three or four now in that status. It means tearing up our contracts.

The witness testified that Section 55 of the by-laws of the constitution of the union provided that any member who was found guilty of improper conduct should be punished by fine and that any member who goes out and broadcasts the private affairs of the union would be considered guilty of improper conduct, and is therefore subject to discipline. This does not mean that a witness cannot go into Court and tell the truth.

T. L. Wilson having previously been sworn, resumed the stand and testified further on Redirect Examination, as follows:

Every member that attends a meeting takes an obligation that he will not reveal any of the private affairs or business of the local union. This happens every meeting night. This means outside of the court room, of course. We would not object to members revealing anything required by the law of the land, called for in court.

Thereupon Both the Plaintiffs and Defendants Rested, and the Above Is All the Evidence Submitted and Received on the Hearing of the Above entitled Cause.

The foregoing bill of exceptions was presented on this the 16th day of March, 1944.

J. Russell McElroy, Whit Windham, John C. Morrow, Presiding Judges.

Order Settling Bill of Exceptions

Signed sealed, and declared to be a true and correct bill of exceptions in this cause.

This 16 day of March, 1944.

J. Russell McElroy, Whit Windham, John C. Morrow, Presiding Judges.

Service of a copy of the foregoing bill of exceptions is accepted this the 11th day of March, 1944.

Wm. N. McQueen, Attorney General, John W. Lapsley, Attorney for Defendants.

OK. J. W. L. H. C. W.

[fol. 296] Cost Bond on Appeal approved and filed March 4, 1944, omitted in printing.

Filed in Office Mar. 16, 1944.

[fols. 297-298] Citation in usual form showing service on Lange, Simpson, Brantley & Robinson, omitted in printing.

[fol. 299] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 300] IN THE SUPREME COURT OF ALABAMA, SIXTH DIVISION

ALABAMA STATE FEDERATION OF LABOR, et als., Appellants,

v.

ROBERT E. McADORY, Solicitor, etc., et als., Appellees

ASSIGNMENTS OF ERROR

Each of the appellants, separately and severally, assign the following errors, separately and severally:

1. The Court erred in not declaring the Bradford Act (Acts 1943, page 252) unconstitutional. R 192-193.

2. The Court erred in declaring the Bradford Act did not violate Section 45 of the Constitution of Alabama. R. 192-193.

3. The Court erred in declaring that Section 7 of the Bradford Act is not unconstitutional. R. 192-193.

4. The Court erred in declining to pass on the constitutionality of Section 16 of the Bradford Act. R. 192-193.

5. The Court erred in not declaring Section 15 of the Bradford Act unconstitutional. R. 192-193.

6. The Court erred in not declaring that Section 16 of the Bradford Act is unconstitutional. R. 192-193.

7. The Court erred in not declaring the Bradford Act null and void. R. 192-193.

Wherever the words "Bradford Act" are used in these assignments of error it is intended to mean the Act approved June 29, 1943 and found on pages 252 to 259, inclusive, of the Acts of Alabama 1943.

[fol. 301] 8. The Court erred in overruling the objections to the question on page 299 of the Record.

Horace C. Wilkinson and Fred G. Koenig, Attorneys for Appellants.

IN SUPREME COURT OF ALABAMA

CROSS-ASSIGNMENTS OF ERROR BY APPELLEES

1. The Court erred in holding Section 12 of the Bradford Act unconstitutional. (Rec. p-.192-193.)

2. The Court erred in holding a portion of Section 13 of the Bradford Act unconstitutional. (Rec. p-. 192-193.)

3. The Court erred in holding Section 17 of the Bradford Act unconstitutional. (Rec. p-, 192-193.)

4. There is no further error in the record.

William N. McQueen, George C. Hawkins, John E. Adams, Evans Dunn, David Satterwhite, John W. Lapsley, Counsel for Appellees.

[fol. 302] IN SUPREME COURT OF ALABAMA

[Title omitted]

MINUTE ENTRY OF ARGUMENT—March 21, 1944

Come the parties by attorneys and argue and submit this cause on the original and cross-assignments of error with *3 Div. 413, Alabama State Federation of Labor, Local Union No. 103, etc., et al. v. Walter C. Lusk, as Treasurer, etc., et al.*, for decision.

[fol. 303] IN SUPREME COURT OF ALABAMA

JEFFERSON CIRCUIT COURT

(No. 8582-X)

6 Div. 234

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION #103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, American Federation of Labor, United Brotherhood of Carpenters and Joiners of America, B. E. Jones, and W. O. Hare, Alabama State Federation of Labor,

vs.

ROBERT E. MCADORY, as Solicitor of Jefferson County, Alabama, and Holt McDowell, as Sheriff of Jefferson County, Alabama

JUDGEMENT—May 25, 1944

Comes the parties by attorneys, and the record and matters therein assigned and cross-assigned for errors, being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered and ordered that the Declaratory Judgment of the Circuit Court be in all things affirmed.

It is further considered, ordered, adjudged and declared by this Court, that Sections 15 and 16 of the Act of the Legislature described in the Petition for a Declaratory Judgment in this cause, be and the same are hereby held to be valid.

It is further considered and ordered that the Appellants, Alabama State Federation of Labor, Local Union #103 United Brotherhood of Carpenters and Joiners of America, American Federation of Labor, United Brotherhood of Carpenters and Joiners of America, B. E. Jones, W. O. Hare, Alabama State Federation of Labor, and Commercial Casualty Insurance Company, surety on the appeal bond, pay [fol. 304] the costs of appeal of this Court and of the Circuit Cou-.

And it appearing that said parties have waived their rights of exemptions under the laws of Alabama, let execution issue accordingly.

[fol. 305] IN SUPREME COURT OF ALABAMA

ALABAMA STATE FEDERATION OF LABOR, ET ALS.,

vs.

ROBERT E. McADORY, AS SOLICITOR, ET ALS.,

Appeal from Jefferson Circuit Court

OPINION

GARDNER, Chief Justice:

Plaintiffs, under the Declaratory Judgment Statute of this State (Title 7, §§ 156-168, Code of 1940), seek to test the constitutional validity of what is commonly referred to as the "Bradford Act," which concerns labor and labor organizations and passed by the Legislature in 1943. Acts 1943, p. 253. All parties upon this appeal argue the case upon the assumption of the regularity of the proceeding in every respect, and the case will be so considered here.

The attack is upon the Act as a whole and upon several of its separate sections. The cause was, by consent, tried before a court of Jefferson County composed of three of its judges, including the presiding judge of that circuit. In the court below the ruling was that the Act as a whole was [fol. 306] constitutional, and Section 7, here so vigorously assailed, was likewise held valid: Sections 12 and 17 were held void, and Sections 13 and 14 void in part, but that the validity of these particular features of the Act did not affect the validity of the Act as a whole. The court refrained from passing upon the constitutionality of Sections 15 and 16. But upon this appeal counsel for the respective parties have very ably argued all the questions presented as to each feature of the Act, and seek a conclusion of the whole matter. We acquiesce in this treatment of the appeal and proceed to decision of all questions raised.

At the outset reference may be made, as is often done, to the principles by which courts are guided when it is sought to strike down as violative of the constitution a legislative act. Uniformly, the courts recognize that this power is a delicate one, and to be used with great caution. It should be borne in mind, also, that legislative power is not derived either from the state or federal constitutions. These instruments are only limitations upon the power.

Apart from limitations imposed by these fundamental charters of government, the power of the legislature has no bounds and is as plenary as that of the British Parliament. It follows that, in passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government. All these principles are embraced in the simple statement that it is the recognized duty of the court to sustain the act unless it is clear beyond reasonable doubt that it is violative of the fundamental law. *State ex rel. Wilkinson v. Murphy*, 237 Ala. 332, 186 So. 487, 121 A. L. R. 283.

Another principle which is recognized with practical unanimity, and leading to the same end, is that the courts do not hold statutes invalid because they think there are elements therein which are violative of natural justice or in conflict with the court's notions of natural, social, or political rights of the citizen, not guaranteed by the constitution itself. Nor even if the courts think the act is harsh or in [fol. 307] some degree unfair, and presents chances for abuse, or is of doubtful propriety. All of these questions of propriety, wisdom, necessity, utility, and expediency are held exclusively for the legislative bodies, and are matters with which the courts have no concern. This principle is embraced within the simple statement that the only question for the court to decide is one of power, not of expediency of wisdom. 11 Am. Jr. p. 799-812; *A. F. of L. v. Reilly* (District Court of Colorado), 7 Labor Cases No. 61, 761.

The broad doctrine as thus announced is sustained by the weight of authority, both in the Federal and the state courts. For our own State the cases of *City of Ensley v. Simpson*, 166 Ala. 366, 52 So. 61, and *State of Ala. Fuel & Iron Co.*, 188 Ala. 487, 66 So. 169, furnish apt illustrations. And as for the Federal courts, reference may be made to *Flint v. Stone Tracy Co.*, 220 U. S. 107.

Likewise, another principle should be kept in mind, and that is: where the validity of a statute is assailed and there are two possible interpretations, by one of which the statute would be unconstitutional and by the other would be valid, the courts should adopt the construction which would uphold it. 11 Am. Jur. p. 725. Or, as otherwise stated, it is the duty of the courts to adopt the construction of a statute

to bring it into harmony with the constitution, if its language will permit. This principle has been often recognized by our own Court. *State v. Birmingham So. Ry. Co.*, 182 Ala. 475, 62 So. 77; *Whaley v. State*, 168 Ala. 152, 52 So. 941; *State ex rel. Collman v. Pitts*, 160 Ala. 133, 49 So. 441. It was well stated by the Supreme Court of the United States in *Labor Board v. Jones & Laughlin*, 301 U. S. 1, in the following language:

> "The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same."

[fol. 308] Bearing in mind these well-recognized principles, we proceed to a consideration of the constitutional questions here presented.

The Act as a Whole

The first constitutional question presented relates to the Act as a whole. It is insisted that its passage violated Section 45 of our Constitution, which provides that every law should contain but one subject, which shall be clearly expressed in its title. This constitutional provision is mandatory upon the courts, and its purpose fully stated in the leading case of *Ballentyne* v. *Wickersham*, 75 Ala. 533. Numerous cases have dealt with this constitutional provision, with full discussion and varied illustrations.

The particular objection here urged so strenuously is that the Act contains more than one subject. Of course, as has been often stated, the purpose of the requirement of a single subject is primarily to prevent "log-rolling" legislation, which would result in the support of doubtful measures induced by adding others upon unrelated subjects. It has been stated, also, that incidentally, the purpose was to avoid ill-considered provisions passing into law while the thought of the Legislature is directed to another subject.

The title of the Act, like every instrument known to the law, is to be construed as a whole. *Gibson v. State*, 214 Ala. 38, 106 So. 231; *Davison v. Phelps*, 214 Ala. 236, 107

So. 86; *State ex rel. Ward v. Henry*, 224 Ala. 224, 139 So. 278; *Yielding v. State ex rel. Wilkinson*, 232 Ala. 292, 167 So. 580. "A statute has but one subject, no matter how many different matters it relates to, if they are all cognate, and but different branches of the same subject." *Yielding v. State*, supra. And in *State v. Henry*, supra, speaking to this question the Court said:

> "It is settled under our decisions that however numerous the subject stated in the title, and however numerous the provisions in the body of the act may be, if they can be by fair intendment considered as falling [fol. 309] within the subject-matter legislated upon in the act, or necessary as ends and means to the attainment of such subject, the act does not offend our constitutional provision that no law shall embrace more than one subject, which must be expressed in its title."

Counsel in argument ingeniously select different phases of the subject of the Act, insisting that each is separate and distinct. But we cannot agree. As we have previously noted, the title of the Act must be construed as a whole and considered in the light of the subject matter treated in the body of the Act. When so considered, we find in the passage of this Act no infringement of Section 45. The entire Act, as well as the title, indicates that the subject matter concerns labor and the regulation of labor organizations. Clearly enough, the establishment of a Department of Labor and a provision for a Mediation Board come within the influence of this subject. So, likewise, as to the numerous regulations contained in the several provisions of the Act.

Counsel refer to some of the prohibitions embraced in the Act, which, it is urged, do not come within the meaning of the word "regulation"; citing to this effect *Miller* v. *Jones*, 80 Ala. 89. Like argument was in *Davidson* v. *Phelps*, supra, where this Court observed, in answer to this insistence, that there are elements of prohibition or restriction inherent in all regulations. Numerous states have like constitutional provisions, among them the State of Illinois. Similar argument was advanced before the Supreme Court of Illinois in *Fenske Bros. v. Upholsterers Int. Union*, 97 A. L. R. 1318, concerning an act, the title of which was: "An Act relating to disputes concerning terms

and conditions of employment." The body of the act prohibited injunctive relief in certain instances which, it was insisted, was in no wise indicated in the title. The Court replied:

> "It is claimed that the title does not indicate anything as to injunctions or their prohibition or that it limits and restricts the jurisdiction of courts of equity, and that these subjects are not germane to the title. We have repeatedly held that, although numerous pro-[fol. 310] visions in an act are not expressed in the general title, the purpose of the constitutional provision is fulfilled when the general subject indicated by the title reasonably covers the provisions of the act, when they are related and have some connection, more or less direct, with the subject of the legislation. Unless the act contains matters having no relation to the title, the constitutional provision is not violated. The provisions of the statute as to injunctions are not inconsistent with, or foreign to, the general subject. The act therefore does not violate constitutional provisions requiring all acts to certain but one subject, which shall be expressed in the title."

But we forego further discussion. Upon careful consideration or argument of counsel for plaintiffs, including a reconsideration of many of the authorities cited (among them, *State v. So. Ry Co.*, 115 Ala. 250, 22 So. 589; *White v. Burgin*, 113 Ala. 170, 21 So. 832; *Woolf v. Taylor*, 98 Ala. 254, 13 So. 688; *Board of Revenue v. State*, 200 Ala. 456, 76 So. 388; *Fidelity & Deposit Co. v. Farmers' Hardware Co.*, 223 Ala. 477, 136 So. 824; *State ex rel. Bassett v. Nelson*, 210 Ala. 663, 98 So. 715; *Houston County Board of Revenue v. Poyner*, 236 Ala. 384, 182 So. 455), we are unable to concur in the view that this Act in any manner violates the provisions of Section 45 of our Constitution.

The Act as a whole is further attacked upon the theory that it is repugnant to the National Labor Relations Act (29 U. S. C. A. §§ 151-166). But we think this question was fully answered by the Wisconsin Court in *Allen-Bradley Local v. W. E. R. B.*, 237 Wisc. 164, 295 N. W. 791. (See also full discussion of the subject in *W. L. R. B. v. Fred Rueping Leather Co.*, 1 Labor Cases p. 516). On review of the opinion in the *Allen-Bradley* case by the Supreme Court

of the United States the ruling of the Wisconsin Court, to the effect there was no such repugnancy between the state act and that passed by Congress, was fully sustained. *Allen-Bradley Local v. Board*, 315 U. S. 740. The Court in unanimous opinion pointed to the well-recognized rule that an intention of Congress to exclude states from exerting their police power must be clearly manifested, and that the courts will not lightly infer that Congress, by the mere passage of a federal act, has impaired the traditional sovereignty of the several states in that regard. The [fol. 311] Court concluded by saying:

> "In sum, we cannot say that the mere enactment of the National Labor Relations Act, without more, excluded state regulation of the type which Wisconsin has exercised in this case."

We consider the ruling in that case ample authority in answer to the contention here made.

Argument is advanced also that the Act is invalid because of a capricious discrimination, in that it expressly excludes organizations coming within the influence of the Act of Congress known as the Railway Labor Act. 45 U. S. C. A. §§ 151-188. But a study of that Act, to which we gave attention in *Steele v. L. & N. RR Co.*, —— Ala. ——, 16 So. (2d) 416, will disclose that it was the intent of Congress, in large part if not entirely, to pre-empt the field covered by the salient features of the statute.

And in addition to this, the authorities very generally recognize that as to the matter of classification, much is left to sound legislative discretion. As said by the Supreme Court of the United States in *Labor Board v. Jones & Laughlin*, 301 U. S. 1, legislative authority exerted within its proper field need not embrace all the evils within its reach. To use the language of that opinion: The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power."

Like thought was also expressed in *People v. Zimmerman*, 278 U. S. 63, 62 A. L. R. 785, where the Court observed that the legislature was not bound to extend regulations to all cases which it might possibly reach; that dealing with practical exigencies, the legislature may be guided by experience. True, as there pointed out, such a classification by the law-making body must not be purely arbitrary, op-

pressive or capricious, but the mere production of inequality is not enough. The inequality produced in order to encounter the challenge of the Constitution must be actually and palpably unreasonable and arbitrary.

Certainly, the full scope of the National Railway Labor Act suffices to demonstrate that the exclusion of organizations concerning that particular field was not an arbitrary [fol. 312] or unfounded discrimination. The two authorities cited should, we think, likewise suffice to answer this contention.

We are thus brought to a consideration of the several sections of the Act here under attack. The validity of the Act and its several provisions rests upon the question of whether or not the State, through its law-making body, was within the proper exercise of its police power.

As we have often observed, the exercise of this power is a governmental function, and is of such a character that it cannot be alienated or surrendered by the legislature. The limits of a state's police power have never been fixed nor its boundaries defined. This for the reason that it is not subject to any definite limitations or boundaries, for it represents the state's great reserve power, and at all times is co-extensive with the necessity of the case and the safeguard of public interest. It is a power inherent in the government, and while it may be set aside by the Constitution, yet in order to find that it has been so set aside, the Constitution must plainly so indicate. And the authorities agree it is a peculiar function of the law-makers to determine when the welfare of the people requires the exercise of the state's police power and what are appropriate measures to that end, subject only to the power of the courts to judge whether any particular law is an invasion of rights secured by the Constitution. *State v. Murphy*, 237 Ala. 332, 186 So. 487; *Franklin v. State*, 232 Ala. 637, 169 So. 295; *Leary v. Adams*, 226 Ala. 472, 147 So. 391; *State v. Polakow's Realty Experts*, 243 Ala. 441, 10 So. (2d) 461.

And in *Nebbia v. New York*, 291 U. S. 502, reference was made to the inevitable collision between the right of the citizen to exercise exclusive dominion over his property and freely contract about his affairs, and that of the state to regulate the use of property in the conduct of business. The Court observed:

"No exercise of the private right can be imagined which will not in some respect, however slight, affect the pub-

lic; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But [fol. 313] subject only to constitutional restraint the private right must yield to the public need.

"The Fifth Amendment, in the field of Federal activity, and the Fourteenth as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.

"It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

The opinion contains many illustrations where private rights must yield to the public good in obedience to the mandate of the law-making power.

There are, of course, limitations to the police power, though they have never been drawn with any degree of exactness. As observed in 11 Am. Jur. p. 975, it is much easier to recognize the existence and sources of this power than to mark its boundaries or prescribe limitations to its exercise. As observed by Mr. Justice Holmes in *Noble State Bank v. Haskell*, 219 U. S. 104, concerning the police power: "Lines are pricked out by the gradual approach and contact of decisions on the opposing sides." As we observed in *State v. Murphy*, supra: "Government takes account of the measured step of progress for the application of the police powers to meet new public needs," and instances were noted indicating that what, in other days would not have found favor or countenance with either law-makers or courts as appropriate or proper manifestations of the police power, is now never questioned or doubted.

The police power is said to extend in a general way to all great public needs. 11 Am. Jur. p. 978. Each state has the

power to regulate the relative rights and duties of all persons, individuals, and corporations within its jurisdiction for the public convenience and the public good, the only [fol. 314] limitation being that such regulations shall not prove repugnant to the provisions of the state or national Constitution. 11 Am. Jur. p. 987.

We should stress, also, the fact that a police regulation not operating unreasonably beyond the occasion of its enactment, is not rendered invalid by the fact that it may affect incidentally the exercise of some right guaranteed by the constitution. But the police power may not unreasonably invade private rights guaranteed under the federal or state constitution. And, as we observed in *State v. Polakow's Realty Experts*, supra, all regulations involve in some degree a limitation upon the exercise of the right regulated. The test is whether the limitation imposed is really by way of regulation only and is one whose purpose and effect go no further than throw reasonable safeguards in the public interest around the exercise of the right. If the limitation is of this character, its imposition is a proper exercise of the police power resident in the legislature and whose exercise is one of the latter's most important functions.

As we have observed, this power must not be exercised arbitrarily or capriciously, and there must be some reasonable relation to the regulation and the ends to be attained. But if upon the matter men may reasonably differ, in view of all the circumstances, the legislative act in the exercise of the police power must be sustained. *Leary v. Adams*, supra. The cases recognize the rule that the law-making authorities may not, under the guise of police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities. The restriction imposed must bear some substantial relation to the public need or general welfare.

In *Euclid v. Ambler Realty Co.*, 272 U. S. 365, to which we made reference in *Leary v. Adams*, supra, concerning a zoning ordinance, the Court made the observation that, while the meaning of constitutional guaranties never varies, yet the scope of their application must expand or contract to meet new or different conditions constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise.

[fol. 315] Speaking also to a zoning ordinance, the United States Supreme Court in *Zahn v. Board of Public Works*, 274 U. S. 325 (also noted in the Leary case, supra), the Court observed in regard to the passage of such zoning ordinance, as follows:

> "The most that can be said is that whether that determination was an unreasonable, arbitrary or unequal exercise of power is fairly debatable. In such circumstances, the settled rule of this Court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question."

In *Labor Board v. Jones & Laughlin*, supra, the Court was dealing with an act of Congress subjecting the employer to many restraints in regard to his relationship with his employee. The act was vigorously criticized as being one-sided in its application; that it subjects the employer to supervision and restraints and leaves untouched the abuses for which employees may be responsible. The Court, in answering the argument, observed that it was dealing with the power of Congress, not with the particular policy or with the extent to which the policy should go, saying:

> "We have frequently said that legislative authority, exerted within its proper field need not embrace all evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power."

And we may observe, additional restrictions upon the rights of the employer are to be found in the Fair Labor Standards Act of Congress, recently considered and enforced by this Court in the case of *Cudahy Packing Co. v. Bazanos*, —— Ala. ——, 15 So. (2d) 720. A more recent illustration, from the United States Supreme Court, is to be found in *Medo Photo Supply Co. v. N. L. R. B.*, decided April 10, 1944.

With these general observations we may now proceed with their application to the several sections of the Act here assailed.

We may note at the outset that no one giving study to the historical background of the laboring man in his struggle to

better his condition in life can for one moment doubt the [fol. 316] wisdom and, indeed, the necessity, for organization. Some of these early struggles may be found noted in 31 Am. Jur. p. 836, but need no elaboration here. As observed in Vol. I, Teller's *Labor Disputes and Collective Bargaining*, Sec. 64, the right to form and join labor unions is but the expression of the employee's right to a free and open market, a recognized substantive right.

In *Labor Board v. Jones & Laughlin*, supra, the Court, after observing that the statute there in question went no further than to safeguard the right of employees to self-organize and to select representatives of their own choosing for collective bargaining or other mutual protection without restraints or coercion by their employer, said:

> "That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer."

We find ourselves in accord with the courts generally that the right of organization is a fundamental one. 31 Am. Jur. p. 851. See also *Pittman v. Nix*, (Fla.) 11 So. (2d) 791.

And we think it is well-settled that the members of a labor organization—that is, workmen who are not bound by contract for a definite period and have not, by agreement freely made, given up such rights—may, without liability, abandon their employment at any time, either singly or in a

body, as a means of compelling or attempting to compel, their employers to accede to demands for better terms and conditions. As the Massachusetts Court observed in *Pickett v. Walsh*, 102 Mass. 572, 78 N. E. 753, laborers, in the exercise of the common-law rights of citizens to pursue [fol. 317] their callings as in their judgment they see fit, have a right to organize unions and to utilize such organizations by instituting a strike. See also *Bossert v. Dhuy*, 221 N. Y. 342. Numerous authorities are found cited in 31 Am. Jur. p. 929.

In *Hardie-Tynes Manufacturing Co. v. Cruise*, 189 Ala. 66, 66 So. 657, these inherent rights to which we have referred; that is, the right of the working man to organize for his own protection and betterment and the right to strike were recognized, wherein the Court, speaking of the authorities upon the subject, said:

> "They seem to be unanimous, also, in holding that employees may rightfully organize themselves into associations for mutual protection and betterment; and that, having thus organized, they may by confederated action withdraw from, or decline to enter, the service of any particular employer."

But our country has grown in population and in industrial importance, and with this growth labor organizations have kept apace. Their power and influence are fully felt and well understood, as well as many conflicts between labor and management in all forms of industry.

As said in *Carpenters' & Joiners' Union v. Ritter's Cafe*, 315 U. S. 722:

> "The economic contest between employer and employee has never concerned merely the immediate disputants. The clash of such conflicting interests inevitably implicates the well-being of the community. Society has therefore been compelled to throw its weight into the contest. The law has undertaken to balance the effort of the employer to carry on his business free from the interference of others against the effort of labor to further its economic self-interest. And every intervention of government in this struggle has in some respect abridged the freedom of action of one or the other or both. • • •

"The right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces has not previously been doubted. * * *

"But the circumstance that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. * * * We must be mindful that the rights of employers and employees to conduct their economic affairs and to compete with [fol. 318] others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the state to set the limits of permissible contest open to industrial combatants."

In some of the states statutes have been passed modeled after the National Labor Relations Act, and providing a complete supervision of labor relations for employers in intrastate enterprises. Illustrative is the Colorado Act of 1943. Session Laws of Colorado 1943, p. 392-418. Somewhat similar is the Wisconsin Act, Chapter 57, Laws of 1939), treated in *Christoffel v. W. E. R. B.*, 10 N. W. (2d) 197; and *Hotel etc. Alliance v. W. E. R. B.*, 236 Wisc. 329. This latter case was in part reviewed by the Supreme Court of the United States in *Hotel etc. Alliance v. W. E. R. B.*, 315 U. S. 437, and as thus reviewed was affirmed.

The power of a state to pass such regulatory measures is based upon the police power, and this has been generally recognized. In the very recent case of *Ex parte R. J. Thomas*, 7 Labor Cases No. 61,831, the Texas Supreme Court observed: "The right of the state under its inherent police power to regulate labor unions in order to protect the public welfare appears to be almost beyond question."

The Colorado Act was reviewed in *A. F. of L. v. Reilly*, 7 Labor Cases No. 61,761, *supra*. And in *Thornhill v. Alabama*, 310 U. S. 88, the Court observed: "The merest glance at state and federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern."

Indeed, as we read the briefs, counsel for plaintiffs with commendable candor concede that the subject is one which may be embraced within the exercise of the police power of the State. The argument, as we understand it, is that the various provisions of this Act to which they have raised objection, do not constitute reasonable regulations, are unreasonable, arbitrary and capricious, or violative of fundamental rights secured under both the State and Federal Constitutions.

[fol. 319] Section 7

This brings us to a consideration of the objections to Section 7 of the Act, first treated by counsel in brief. This provision of the Act requires that every labor organization functioning in Alabama, or hereafter desiring to function in Alabama, shall, before doing so, file a copy of its constitution and by-laws, and a copy of the constitution and by-laws of the national or international union, if any, to which such organization belongs, with the Department of Labor, omitting, however, any ritual relating solely to the initiation or reception of members. Amendments to such constitutions and by-laws are likewise required to be filed with the Department of Labor. All such organizations functioning in this State and having 25 or more members in any calendar year shall, on a fixed date each year, file with every member of their respective labor organizations and with the Director of the Department of Labor, a report in writing showing the following facts, as of the close of business on the 31st day of December next preceding the date of filing:

(1) the name of the labor organization; (2) the location of its principal office in Alabama; (3) the name of the president, secretary, treasurer, and other officers and business agent, together with their salaries, wages, bonuses, and other remuneration paid each, and the post office address of each; (4) the date of regular election of officers; (5) the number of its paid-up members; (6) complete financial statement of all fees, dues, fines, or assessments levied or received, together with an itemized list of all disbursements, the name of recipients and the purpose therefor, covering the preceding twelve months; (7) a complete statement of all property owned by the organization, including monies on hand or credited to the organization.

The Director of Labor shall have printed and make available public forms for the making of such report, and at the time of the filing of such report, it shall be the duty of the organization to pay the Director of Labor an annual fee therefor in the sum of $2.00. The Director is to file and index the reports, and the section provides that the records provided for shall be made available by the Director of [fol. 320] Labor in his office to the Governor of Alabama for examination. It is made unlawful for any fiscal or other officer or agent of any labor organization to collect or accept payment of any dues, fees, assessments, fines, or any other monies from any member while such labor organization is in default with respect to filing the annual report required by this section.

In Section 18 of the Act the violation by any labor organization of any of its provisions subjects them to a civil penalty of a sum not exceeding $1000.00 for each such violation. And by the same section the violation of the provisions of section 7, as to the officers or agents collecting dues and other monies while such organization is in default with respect to filing the annual report, is declared to be a misdemeanor and punishable by a fine of not exceeding $500.00 or by imprisonment at hard labor for not exceeding twelve months, or both.

In arguing against the validity of this section counsel lay much stress upon the constitutional right of free speech and of assembly, and we are cited, among other authorities, to *DeJonge v. Oregon*, 299 U. S. 353, where the court observed that the right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental. And counsel would argue that, because it is a part of the purpose of labor organizations to peaceably assemble and discuss their affairs, the State has no right to regulation of the character here in question because of the fact these fundamental rights are involved and the restraints of Section 7 are violative thereof. And in reply brief the argument is further advanced that these provisions must be held unreasonable and invalid if in fact there is any restraint to the liberty of speech involved. We are cited to both the Alabama and Federal Constitutions guaranteeing the freedom of assembly and speech, and to *Bridges v. California*, 314 U. S. 252; *Murdock v. Penn.*, 87

L. Ed. 1292, 319 U. S. 105; and other authorities of like nature.

Counsel do not contend that labor organizations are immune from regulation, but assert the contrary. They say, [fol. 321] however, regulation is one thing, but restraint of liberty of speech another. But we think this argument overlooks the full power of the Legislature in the exercise of the police power of the State, and it overlooks also the full meaning of the word "functioning," as employed in Section 7. As defined in the Act, a labor organization is one which has within its membership employees working in the State of Alabama, organized for the purpose of dealing with employer or employers concerning the hours of employment, rates of pay, or the tenure or other terms and conditions of employment. And the courts, of course, take judicial knowledge of the fact—and the Act so discloses—that there are assessments and fines and dues, monies collected and disbursed, officers elected, and agents employed. Such organizations may sue and be sued and its properties subjected to the satisfaction of any judgment rendered against it. Title 7, Secs. 142-5, Code of 1940. The purpose and scope of the activities of labor organizations is fully discussed in *U. M. W. v. Coronado Co.*, 259 U. S. 344. And indeed, these are matters with which the courts are now entirely familiar.

"Function," as used in this Act, simply means a labor organization, whether incorporated or not, engaged in business in this State, and in the character of business thus indicated, for the promotion of the interests of its members. True, as a part of its functioning, and a part only, the assemblage of its members for discussion is had, but this is merely incidental. As the authorities cited indicate, every enactment for public need necessarily results in some restraint of individual liberty.

But as observed by this Court in *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11 So. (2d) 383, reiterated in *Lash v. State*, 244 Ala. 48, 14 So. (2d) 229, taking the language from the Supreme Court of the United States in *Jones v. City of Opelika*, 316 U. S. 584, and *Carpenters' & Joiners' Union v. Ritter's Cafe*, 315 U. S. 722:

> "Courts are competent to adjudge the acts men do under the color of a constitutional right, such as that of freedom of speech, and to determine whether the

claimed right is limited by other recognized powers [fol. 322] equally precious to mankind. • • • Whenever state action is challenged as a denial of 'liberty,' the question always is whether the state has violated the 'essential attributes of that liberty.'"

Numerous instances might be cited to indicate where private rights must yield to public need. The establishment of the Securities Commission of this State is one example; and the requirement of a certificate to conduct the business of real estate brokers, treated in *State v. Polakow's Real Estate Experts*, supra, is another.

As observed by the Supreme Court of Texas in *Ex parte R. J. Thomas*, supra, the state, under its police power, may enact laws which interfere indirectly and to a limited extent with the right of speech or the liberty of the people where they are reasonably necessary for the protection of the [illegible]. And as observed in *Carpenters' & Joiners' A. v. Ritter's Cafe*, supra:

"[illegible] as here, claims on behalf of free speech are met by claims on behalf of the authority of the state to enforce reasonable regulations for the protection of the community as a whole, the duty of this Court is plain. Whenever state action is challenged as a denial of liberty, the question always is whether the state has violated 'the essential attributes of that liberty.' • • • While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause, that clause postulates the authority of the states to translate into law local policies to promote the health, safety, morals and general welfare of its people. The limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise."

The argument advanced here was also advanced and answered by the Colorado Court in *A. F. of L. v. Reilly*, supra, and to like effect. See also *Christoffel v. W. E. R. B.*, supra. And in *Whitney v. California*, 274 U. S. 357, it was pointed out that the freedom of speech guaranteed by the Constitution is not such an absolute right as to deprive legislative bodies of their proper exercise of the police power of the state.

If we follow the argument of counsel for plaintiff to its ultimate conclusion, it is difficult to see where any effective legislation could be had concerning regulations of organizations of this character. We think the authorities which we have herein cited clearly demonstrate that they are subject [fol. 323] to the police power of the state, and that the contention as to the violation of the constitutional provisions of free speech and assembly invalidates any of the provisions of the Act, is untenable.

The argument is further advanced that the Act requires the issuance of a license to a labor organization as a condition precedent to functioning in the State; and much stress is laid upon *International Textbook Co. v. Pigg*, 217 U. S. 91. That authority rested solely upon the right of a state to regulate interstate commerce. The opinion concludes with the statement: "The state cannot thus burden interstate commerce." It is, in our opinion, inapplicable here. In the first place, there is no license required. The fee of $2.00 is merely a regulatory and incidental matter, to be collected for the purpose of defraying the expense incidental to the furnishing of the forms and reports, and to the filing thereof with the Director.

The question resolves itself after all as to whether or not the filing of these reports can be held to be a reasonable regulation under the police power of the State. The Director of Labor has construed the Act to the effect that these reports are not for public consumption. We think a reading of the Act clearly indicates that they are to be exhibited to the Governor only, and the Director is justified in this interpretation of the Act. Clearly enough, if we are to have a Department of Labor to deal with labor organizations, and to attempt to settle disputes, and to bring about industrial peace in this State, it is a reasonable regulation that the Director be informed of the character of the organization, its varying rules and regulations.

The constitution, rules, and by-laws of a labor organization are the source of its authority. They constitute not only the contract between the labor union and the members, but also the contract between the members and other members of the union. As said in Vol. I, Sec. 62, Teller on *Labor Disputes and Collective Bargaining:* "Questions relating to the property, funds and internal administration

of labor unions raise no problem peculiar to such unions." And in the succeeding section of this work the author cites [fol. 324] instances in which it became necessary to carefully examine into the source of the particular organization involved, so as to determine whether or not it was in fact a labor union or merely an organization seeking, for its own advantage, to assume the cloak of such a union.

A rather extreme example of the constitutional validity of requirements of this character is to be found in the statute of New York, which required a copy of the constitution, by-laws, rules, regulations, oath of membership and the roster of its membership, of a secret organization, to be filed with the Secretary of State, with exemption of numerous other secret organizations from the influence of the act. Upon the question of classification, the Court observed, among other things, that a lack of abstract symmetry does not matter and that the state may classify with reference to the evil to be prevented. The holding was that the requirements were valid, and the inequality produced was not actually and palpably unreasonable and arbitrary. See *People* v. *Zimmerman*, 278 U. S. 63, 62 A. L. R. 785, affirming the New York Court of Appeals in *People v. Zimmerman*, 43 A. L. R. 909.

And as to the requirement for a financial statement, we think it clear enough these provisions may be fully justified as a regulation for the benefit of the members of the organization. The Texas Court in *Ex parte: R. J. Thomas*, 174 S. W. (2d) 958, referred to the large membership in labor unions and the large sums of money contributed in the form of dues and the manner in which these unions function for the protection of their members, all of which greatly affect the economic life of the individual worker. The opinion proceeds:

> "Because of the large membership in a single union, and the limited opportunity of the individual member to personally familiarize himself with the manner in which his union is operated makes it impossible for the individual worker to protect himself in his own right against its mismanagement. These circumstances present a field for legislation by the State for the protection of the rights of the laborer as well as the general public."

[fol. 325] Nor can we agree that any claimed right of privacy in any manner affects the validity of Section 7. It has in it no elements of a "fishing expedition" as spoken of in *Federal Trade Comm. v. American Tobacco Co.*, 264 U. S. 298, or in *Jones v. Securities & Exchange Comm.*, 298 U. S. 1. And, indeed, under the proper interpretation of the Act, as given by the Director of Labor, these reports, as we have above indicated, are not for public consumption. But even beyond all this, any such claimed right of privacy is subject, as pointed out in *Meyer* v. *Nebraska*, 262 U. S. 390, "To such restraints as are necessary to the common welfare."

The provisions of Section 7 have the appearance of having largely been taken from Section 5 of the Labor Relations Act of the State of Kansas (1943), as found reported in 2A Labor Law Service No. 41,033. The Kansas Act, however, in Section 6 goes one step further and makes specific provision to the effect that the records filed with the Secretary of State shall be available to all persons. We do not find where the provisions of this Kansas Act have been tested in the courts. It is given comment by the author in an article to be found in the January, 1944, issue of the *Iowa Law Review*, with particular reference to the requirement of financial statements, which the author insists is to be sustained, both upon the ground of protection of the members of the labor organization and upon the further ground that the financial affairs of unions, particularly economically powerful unions, are matters of public concern.

But the Legislature has seen fit to make these requirements, and we are not able to say that they are arbitrary or capricious. The most that could be said for plaintiffs is that the question is a debatable one, and as we have pointed out when such is the case, it is the duty of the court to sustain the legislative act.

We have already answered in the negative the contention that the Act conflicts with the National Labor Relations Act, and, as we have said, it imposes no burden on interstate commerce. We have also stated our view that no license is here required, and that the two dollar fee [fol. 326] provided for in this section is but an incidental charge. Likewise, we have adverted to the case of *International Textbook Co. v. Pigg*, supra, as indicating its in-

applicability to the instant case. After all, and reduced to its last analysis, the question is whether or not the Legislature, in the provisions of Section 7, overstepped the bounds of police power of the State. If it be conceded there is debatable ground—and we think that is clear—it is our duty to declare in favor of the validity of this section. Such is our conclusion.

We may add the record discloses a number of labor unions (192) promptly complied with the provisions of Section 7. And it also may be noted that Congress in Section 112 of the Revenue Act of 1943 inserted a provision requiring labor organizations, though exempt from income tax, to file an annual report with the Commissioner of Internal Revenue disclosing "the items of gross income, receipts and disbursements, and such other information, for the purpose of carrying out the provisions of this Chapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe." And though not here binding, it is proper also to direct attention to the fact that the three judge ruling of the court below in the instant case, declaring Section 7 valid, was likewise the ruling of the three judge federal court in the case of *Borden v. Sparks et al.*, (decided February 10, 1944), 8 Labor Cases No. 62,027. These rulings are due consideration in weighing the reasonableness of the regulations and as to whether or not a debatable question as to the exercise of the police power was presented.

Section 12

The next question involved concerns the validity of that part of Section 12 of this Act making it unlawful "in and about the business of an employer for any employee to refuse to handle, install, use, or work on any particular materials, equipment or supplies because not produced, processed, or delivered by members of a labor organization."

It seems to be established by the decided weight of authority (*Coppage v. Kansas*, 236 U. S. 1; L. R. A. (1915) C) p. 960; *Parkinson Co. v. Bldg. Trades Council* (Cal.), 21 [fol. 327] L. R. A. (N. S.) 550; *Cohn & Roth Elec. Co. v. Bricklayers Local* (Conn.) 6 A. L. R. 887; *Bossert v. Dhuy*, 221 N. Y. 342) that a rule of a labor union forbidding its members to work with non-union men or members of a rival organization is valid. And likewise as to a rule of a labor organization refusing to allow members to work with non-

union material. *Paine Lumber Co.* v. *Neal*, 244 U. S. 459; *State v. Van Pelt*, 136 N. C. 633; *Auburn Draying Co. v. Wardell*, 227 N. Y. 1; annotations, 6 A. L. R. p. 958, 116 A. L. R. 513, 52 A. L. R. 1145, and 54 A. L. R. 806. See also to like effect, 63 C. J. p. 655; Restatement of the Law of Torts, §§ 802 et seq.

Though these cases may not have involved legislative acts, yet the principles that they recognize must be taken into consideration in determining the validity of this particular section. Counsel for defendants lay some stress upon *A. F. of L. v. Reilly*, the Colorado case cited above, defining a secondary boycott. But there is little similarity between the Colorado statute and Section 12 of the Bradford Act. The Court there was dealing with Section 2(11) of the Colorado statute, supra, defining secondary boycott. That provision of the Colorado Act here pertinent reads as follows:

> "The term 'secondary boycott' shall include causing or threatening to cause, and combining or conspiring to cause, and combining or conspiring to cause or threat to cause, injury to one not a party to the particular labor dispute, to aid which such boycott is initiated or continued, whether by (a) withholding patronage, labor, or other beneficial intercourse; (b) picketing; (c) refusing to handle, install, use or work on particular materials, equipment or supplies; of (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another or to compel the party with whom such labor dispute exists to comply with any particular demands."

It is this provision which was upheld by the Colorado Court.

Section 12, however, makes it a crime * * * a misdemeanor * * * with permissible heavy penalty, for a single workman to refuse to handle any material because not produced, processed, or delivered by members of a labor organization. The question of boycotts is fully treated in 31 Am. Jur. p. 955 et seq., and in an extensive note to *Auburn Draying Co. v. Wardell*, 6 A. L. R. 901. Many of [fol. 328] these authorities have been by us given consideration, but not in any of them do we find a provision of this

drastic nature. Indeed, as we read the authorities, the provisions of Section 12 do not establish a secondary boycott as defined in any of the cited cases. See *Duplex Printing Press Co. v. Deering*, 254 U. S. 443. In the Wardell case, the New York Court makes reference to the individual freedom one may exercise, though indirectly it may affect another, saying:

> "The individual may do, and does, many acts which in their effect are or may be coercive as to another. The right to do those acts inheres in the natural freedom and the civil rights which are his."

We have shown that the authorities recognize that the workman has a right to refuse to work with non-union material. Yet under this section he would be compelled to work, or else be guilty of a criminal offense. Of course, every man may engage to work for or deal with, or refuse to work for or deal with, any man or class of men as he sees fit—whatever his motive or the resulting injury—without being held in any way accountable therefor. 31 Am. Jur. p. 842. Some of the authorities have said that members of labor unions consider the material processed or delivered by non-union workers threatens the interest of the union, and that in refusing to work on such material the union is only refusing to aid in its own destruction. 31 Am. Jur. p. 942.

This Section 12 makes no reference to a conspiracy or to the confederated action of two or more persons. Nor does it have reference to any intention of injury to another. The individual workman may be acting in entire good faith and in obedience to a rule of his local union, or he may be acting in entire good faith in what he considers to the best interests of the union to which he belongs, and to labor unions in general. His conduct may be in the nature of an individual protest against the use by his employer of material not processed by members of a labor union. But all of this is entirely lawful. He is acting within his rights, but without coercion and without confederation, and without malicious intent.

[fol. 329]. The authorities are to the effect that a labor union may, so long as its action is not directed against a particular individual, refuse to permit its members to work on material produced or transported by non-union labor,

and that a strike called to compel the handling of union material only is not unlawful. 31 Am. Jur. p. 942. Of course, the refusal of the individual worker may culminate in a labor dispute, but if so, his action would be entirely lawful. The effect would be, as is well argued, to make it a crime under such circumstances to engage in a labor dispute concerning work with non-union material. A workman, even though acting in a proper manner, and refusing to work on non-union material but offering to submit the matter to a board of mediation, would yet be gulity of an offense.

It is to be noted that this section does not deal with the right to strike for non-union material. It deals solely with individual protest of the individual workman. We are inclined to the view that it is simply a refusal to perform a contract for personal service, which is under this section made a crime, and that it infringes closely upon the Thirteenth Amendment to the Federal Constitution prohibiting involuntary servitude of any character. As said in *Bailey v. State*, 219 U. S. 219: "There is no more important concern than to safeguard the freedom of labor upon which alone can enduring prosperity be based." In the same case the Court also observed:

> "In this class of cases where the entire subject matter of the legislation is otherwise within state control, the question has been whether the prescribed rule of evidence interferes with the guaranteed equality before the law or violates those fundamental rights and immutable principles of justice which are embraced within the conception of due process of law."

And we may note the very recent case of the United States Supreme Court, re-affirming the Bailey case and others of like character, in *Pollack v. Williams*. (MS), decided April 10, 1944. It is suggested that Section 12, in its effect, merely outlaws a "sit-down" strike, condemned by [fol. 330] the statues of several states (Vol. I, Sec. 106, Teller on *Labor Disputes and Collective Bargaining*), and by the cases of *Apex Hosiery Co. v. Leader*, 310 U. S. 469, and *N. L. R. B. v. Fansteel Corp.*, 306 U. S. 240. But we think it requires no discussion to disclose that the provisions of Section 12 in no manner are analogous to a "sit-

down" strike as defined in any of the statutes or cited decisions.

And as observed by the Supreme Court of the United States in *Labor Board* v. *Jones & Laughlin*, supra, the single employee is helpless in dealing with his employer, dependent as in most instances he is upon the daily wage for maintenance of himself and family and unable to safely leave his employment, however aggrieved he as an individual may feel. To all practical purposes, under the terms of this section the employee, though in entire good faith and convinced that material produced by non-union labor is destructive of his interest, yet in order to hold his job and continue to work, must suppress any expression of such conviction.

The Colorado Court in *A. F. of L.* v. *Reilly*, supra, declared Section 20 of the Colorado Act as violative of the due process clause of the Fourteenth Amendment. This section required that all labor unions be incorporated. The Court held that this was an unwarranted interference with the union's internal organization affairs and the imposition of unwarranted burdens upon the exercise of the basic rights guaranteed in the bill of rights. The Court in that opinion observed: "Said section is an imposition of a previous general restraint upon the exercise of basic civil rights, and the finding and declaration herein, as previously stated, is founded, and the conclusion of the Court reached, upon that ground.

As to whether or not the provisions of Section 12 contravene the Thirteenth Amendment to the Federal Constitution is a question we may leave to one side and undetermined. Like the Colorado Court, we think the decision may well be rested upon the ground that it violates fundamental and basic civil rights as guaranteed under the Fourteenth Amendment.

[fol. 331] Section 13

We are persuaded, also, that that part of Section 13 of the Act, making it unlawful to strike except when it is authorized by the vote of the majority of the regular employees working in the business, plant, or in such unit thereof, expressed by a secret ballot, cannot be sustained. As we have previously noted, each individual employee has a right to strike for a legally justifiable purpose, and such

a right, of course, rests upon a minority as well as upon a majority. *Hardie-Tynes Manufacturing Co. v. Cruise*, supra; *Welch v. State*, 28 Ala. App. 273, 183 So. 879 [cert. den., 236 Ala. 577, 183 So. 886].

This section makes no distinction in what the authorities refer to as a lawful or unlawful strike. It must be construed, therefore, as having application to a perfectly lawful strike for a lawful purpose conducted in a lawful manner. The question, therefore, is whether or not a small group of individuals, for a legally justifiable reason, may be denied the right to strike unless it is by secret ballot, authorized by a majority of the regular employees working in the plant or in the business.

Of course, as we have observed, the right to strike or to refrain from work is a personal, individual right. Reduced to its last analysis, therefore, the question arises as to the reasonableness of a regulation making the right to strike dependent upon the will of others who may not in any manner be connected with, or interested in, the welfare of the minority group. Indeed, these other employees may not belong to or believe in a labor organization. This Act is wholly different from the Wisconsin Act dealt with in *Hotel etc. Employees Alliance v. W. E. R. B.*, 236 Wisc. 329. In the act there considered the principle of collective bargaining, featured after that of the National Labor Relations Act, was provided, and the question of a strike was left to the determination of the majority of a collective bargaining unit. The court there observed: "The principle upon which authorized collective bargaining depends is [fol. 332] that the rule of the majority within an appropriate collective bargaining unit shall bind the minority." Reference was made to this principle by this Court in *Steele v. L. & N. R. R.*, — Ala. —, 16 So. (2d) 416, and numerous instances have been noted where the courts have held that in proper cases the minority must yield to the rule of the majority in such bargaining units.

The Wisconsin Court recognized this principle and gave it effect in upholding the Wisconsin statute, but we have no such provision in the Act here under consideration. The denial of the right to strike is made to rest, not upon the rule of the majority of any bargaining unit or in any craft to which the workmen belong, but upon the whim or caprice of others who may be employed in the business, plant, or

unit thereof, whoever they may be and whatever views they may entertain as to labor or labor unions. The unit referred to is, of course, the unit of the business or plant, presumably having reference to those larger corporations whose business activities call for separate locations or units.

The principle recognized by the Oregon Court in *A. F. of L. v. Bain*, 130 A. L. R. 1278, holding invalid a statute which prohibited picketing by a minority of the employees of a particular employer as an incident to a labor dispute, has application here. There, of course, was involved the constitutional right of free speech, and the Court observed: "We see no escape from the conclusion that the denial of such a right to the members of a minority is no less an unconstitutional abridgment of the right simply because it is saved to the majority." See also *A. F. of L. v. Swing*, 312 U. S. 321, and *Goolsby v. State*, 213 Ala. 351, 104 So. 901. Of course, a strike is one manner in which labor communicates its position on certain questions to the outside world. The right to strike depends largely upon the purpose for which the strike is called and the manner in which it is conducted.

True, in *Dorchy v. Kansas*, 272 U. S. 306, is the statement: "Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike." This, read in connection with the entire opinion, is to be interpreted as meaning that a strike for an unlawful pur- [fol. 333] pose might be forbidden, or that in fact strikes might be by the states regulated under the police power without the violation of the Fourteenth Amendment. We cannot read that case, however, to the end that the state may constitutionally forbid a lawful strike called for a lawful purpose. Vol. I, Secs. 26 and 85, Teller on *Labor Disputes and Collective Bargaining*.

Nor do we interpret *Pittsburgh Plate Glass Co. v. N. L. R. B.*, 313 U. S. 146, or *Carpenters' & Joiners' Union v. Ritter's Cafe*, supra, as stating any principle in conflict with this conclusion. Indeed, as we interpret this section, the restrictions thus placed on the right to strike may in practical effect amount to a prohibition which, as to a lawful strike, is beyond legislative authority.

And in considering this section, it should be kept in mind, as stated by the Massachusetts Court in *Pickett v. Walsh*,

78 N. E. 753: "The right of laborers to organize unions and to utilize organizations by instituting a strike is in exercise of the common law right of every citizen to pursue his calling, whether of labor or business, as he in his judgment thinks fit."

But we forego further discussion, as much of the reasoning applicable to Section 12 is likewise to be applied to Section 13. We are well convinced that a prohibition to strike placed upon a minority group, unless sanctioned by secret ballot of others who are without interest in their welfare, is an unreasonable and arbitrary restraint, and must be stricken down.

Section 15

In Section 15 it is made unlawful for any labor organization, officer, or agent, or any other person, to collect, receive, or demand directly or indirectly from any person any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege of work. Excluded from the provisions of this section are initiation fees or dues. In the declaration of policy as found in this Act is the following langauge: "The right to live involves the right to work. The public and working men and women must be protected. The activities of labor organizations affect the social and economic conditions of the State and [fol. 334] the welfare of its citizens. It is declared to be the policy of this State, in the exercise of the police power and in the protection of the public interest, to promote voluntary and peaceful settlement and adjustment of labor disputes and to regulate the activities and affairs of labor organizations, their officers, agents, and other representatives in the manner and to the extent hereinafter provided."

In other parts of the body of the Act are declarations to the effect that every person shall be free to join or refrain from joining any labor organization except as provided otherwise in Section 16 of the Act, and nothing in the Act shall impede or diminish any right to strike or the right of individuals to work. It is further declared that nothing in the Act shall be so construed as to invade unlawfully the right of freedom of speech.

And Section 15 concerns the declared policy of the right to work, a declaration which in fact needed no reiteration,

as it is a right universally recognized. One's employment, trade, or calling, is a property right, and the wrongful interference therewith is an actionable wrong. *U. S. Fidelity & Guaranty Co. v. Millionas*, 206 Ala. 147, 89 So. 732, 29 A. L. R. 520. In *Carter v. Knapp Motor Co.*, supra, the holding was that the right to conduct one's business without the wrongful interference of others is a valuable property right which will be protected if necessary by injunctive process, and that the enjoyment of good name and good will of a business is likewise a valuable property right, subject to like protection.

In *Lash v. State*, 244 Ala. 48, 14 So. (2d) 229, is the observation: "Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor." The argument against this section of the Act is in fact rested in large part, if not wholly, upon the contention that it is too indefinite and uncertain, and numerous authorities are cited to the effect that criminal satutes must be explicit. *Savage v. Wallace*, 165 Ala. 572, 51 So. 605; *State v. Skinner*, 20 Ala. App. 204, 101 So. 327; *Standard Oil v. State*, 178 Ala. 400, 59 So. 667; *Woco Pep Co. v. City of Montgomery*, 213 Ala. 452, 105 So. 214; *United States v. Cohen Grocery Co.*, 255 U. S. 81; *Small Co. v. American Sugar Refining Co.*, 267 U. S. [fol. 335] 233; *Champlin Refining Co. v. Corporation Commission*, 286 U. S. 210. These authorities cited by counsel have been considered, and we think are readily distinguishable. The language is plain—it simply prohibits a charge upon the right of one to work. Illustrations tending to support this view may be found in *Whitney v. California*, 274 U. S. 357. Whether or not certain practices to which counsel refer are to be construed as coming within the provisions of the Act are questions which will arise when the proper case is presented.

Expressly excluded are dues and assessments. These are, therefore, not involved. This section was directed towards the practice whereby a person seeking a job is required to obtain a permit or a certificate by the payment of a sum of money to some organization before being permitted to exercise his right to work. The Legislature, in the exercise of its police power, has seen fit to put its stamp of disapproval upon any such practice, and Section 15 was merely to put in force the declared policy of the Act that

the right to live involves the right to work. We are persuaded without further discussion that the language here is sufficiently explicit and cannot be condemned for indefiniteness. That it is a proper exercise of the police power appears not to be seriously questioned.

Section 16

In Section 16 the Legislature has seen fit to make it unlawful for any executive, administrative, professional, or supervisory employee to be a member of a labor organization which permits such membership. We have fully recognized, and the point was emphasized in the recent case of *Steele v. L. & N. R. R., supra*, the right of these voluntary organizations to determine for themselves who shall become members. The question is there fully discussed, with citation of supporting authorities. But that conclusion by no means affects the exercise of the broad police power of the State. The question simply is as to whether or not this regulation is within the bounds of reason or is it arbitrary and capricious? As we have observed, if the question is one that is debatable, it is the duty of the Court to sustain the Act. Clearly enough, it is debatable. Indeed, the actions of unions themselves disclose a reasonable ground for this regulation, for the record shows that in a number [fol. 336] unions those occupying supervisory positions here referred to in Section 16 are refused membership in the union. This is rested upon the theory that those unions consider that the superintendent, as to the workmen under him, sits across the table with management, and that his interests lie more with the employer than with the employee.

We might point to the charges contained in *Local Union 57 v. Boyd*, —— Ala. ——; 16 So. (2d) 705, as furnishing some illustration of the reasonableness of this regulation. The bill there was rested upon the theory that the complainant suffered expulsion from the union because, in the exercise of his duties, some of the employees who were members of the same union as complainant, the superintendent, lost their places. In Vol. II, Teller on *Labor Disputes and Collective Bargaining*, p. 933, the author points out many decisions of the National Labor Relations Board adopting the policy excluding supervisory employees from the bargaining unit where either of the competing labor unions desires their exclusion. And all of this is based upon the

reasoning that the supervisory employee is connected with management.

Of course, all of these divisions of opinion concerning the proper place for the supervisory employee revolve around the question of a conflict of interest and as to whether or not one can serve two masters. The proper place for such supervisory employee has often been considered by the National Labor Relations Board, with the result they were held to be more correctly designated with management. Leading to like result is the case of *J. L. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514, and *International Association Machinists v. National Labor Relations Board*, 311 U. S. 72.

We are persuaded without further di-cussion that this regulation has a reasonable basis upon which to rest, and that the objections to its validity are not well taken.

The section protects existing insurance contract rights; that is, rights to insurance benefits secured by reason of membership in labor organizations. By reason of this stipulation it may be that as a practical result the restriction imposed will be of a limited nature. As we construe it, [fol. 337] it must mean that as to a member of a labor union who had, by reason of such membership or by reason of contract, secured certain insurance benefits which are to be lost upon his separation from the union, advancement to the position of superintendent would not be prohibited. This for the reason that his union connection is essential to the preservation of his benefit contract. Anyone, however, hereafter becoming a member of the union, and by reason of such membership, or by contract, becomes entitled to certain benefits, must yield those benefits by accepting a supervisory position. This for the reason the provisions of Section 16 are before him in the eyes of the law, and he takes his benefits subject thereto. But this relates only to the practical operation of Section 16. As thus construed, we are persuaded that it is a valid provision.

Section 17

As to Section 17, making it unlawful for any labor organization or any organization of employers of labor to make financial contributions to any political party or to any person who may be a candidate for any political or party office, and the like, it does not seem to be seriously controverted

that so much of said section placing such prohibition upon an organization of employers of labor is invalid under Section 45 of our Constitution because bearing no relation to the subject of the Act. The insistence on the part of defendants is that the separability clause of the Act would justify the Court in eliminating that feature which prohibits an organization of employers of labor from making such contributions, and leaving the prohibition against organizations of employees in force and unimpaired. There are numerous cases upon this question of separability, among them being *Gibson v. State*, 214 Ala. 38, 106 So. 231, to which counsel for defendants refer. Some reference is made to *Smith v. Court of County Commissioners*, 117 Ala. 196, 23 So. 141, to the effect that the constitutional provisions will only be passed upon when called in question by the party interested.

But this proceeding is under the Declaratory Judgement Act, and all parties to the suit are interested and are de- [fol. 338] sirous that the rights under the Act might be fully determined and their future course thus chartered. We think we should proceed upon that basis.

We recognize the force of the argument that the separability clause should be given effect, where possible, to save the Act. But the principle is well understood that a clause of this character may not be invoked to save the Act when in contravention of the obvious legislative intent. *State ex rel. Crumpton v. Montgomery*, 177 Ala. 212, 59 So. 294; *State ex rel. Lister v. Hawkins*, 229 Ala. 144, 155 So. 692; *Wilkinson v. Stiles*, 200 Ala. 279, 76 So. 45, *Williams v. Standard Oil Co.*, 278 U. S. 235. No one can read the provisions of Section 17 without at once coming to the definite conclusion that the Legislature intended to put organizations of employees and employers on the same basis, and that evidently the law-makers thought it would be unjust to prohibit contributions for political campaigns to one and permit them to the other. The two classes are intertwined and so correlated as to our minds disclose the legislative intent of equality in application. We are persuaded, therefore, that the exclusion of the organizations of employers from the provisions of this section must, in order to give effect to the legislative intent, likewise exclude the employees. Such being the case, the whole of Section 17 goes down.

There are a number of sections in the Act the validity of which are in no manner here brought into question. It is clear enough, therefore, that the invalidity of the several sections herein indicated in no manner affects the Act as a whole. And we have already observed that the Act as a whole is entirely valid.

The result of our finding, therefore, is that the Act as a whole is to be sustained, including Sections 7, 15, and 16, under attack in this proceeding; that Section 12, and so much of Section 13, as prevents a strike except by a vote of a majority of the employees in a business, plant, or in a unit of such plant expressed in a secret written ballot, is declared ineffective, together with the provisions of Section 14 intended to make more effective that part of Section 13 as to unlawful strikes; and all of Section 17, are declared to be invalid.

[fol. 339] The ruling here as to the invalidity of Section 12 and the portion of Sections 13 and 14 as above indicated, is in accord with the holding of the Court below; and the cross-assignments of error as to these rulings are without merit. Like observation is applicable to Section 17, the ruling here being in accordance with the ruling of the court below. There was no holding in the court below as to the constitutionality of Sections 15 and 16, which are held to be valid.

It results, therefore, that the cross-assignments of error are not well taken, and that the judgment appealed from is due to be affirmed.

Affirmed.

Foster, Livingston, and Stakely, JJ., concur.
Thomas and Brown, JJ., dissent.

DISSENTING OPINION

THOMAS, Justice (Dissenting):

I have only to say that in my opinion the Bradford Act (Acts of Alabama 1943, p. 253) is contrary to organic law, state and federal.

The Act offends the rule of duplicity clearly stated in Section 45 of the Constitution of Alabama. Many authorities cited in Code 1940, Art. IV, § 45, p. 98, Vol. 1 uphold

this position. See *Ballentyne v. Wickersham*, 75 Ala. 533; *Woolf v. Taylor*, 98 Ala. 254, 17 So. 688; *White v. Burgin*, 113 Ala. 170, 21 So. 832; *State v. Southern Ry. Co.*, 115 Ala. 250, 22 So. 589; *Board of Rev. and Road Com'rs of Mobile County v. State ex rel. Roberts*, 200 Ala. 456, 73 So. 388; *State v. Nelson*, 210 Ala. 664, 98 So. 715; *Fuqua v. City of Mobile*, 219 Ala. 1, 121 So. 696; *Fidelity & Deposit Co. v. Farmers Hardware Co.*, 223 Ala. 477, 136 So. 824; *Houston County Board of Revenue v. Poyner*, 236 Ala. 384, 182 So. 455.

The several subjects contained in the title and body of the Bradford Act are "to create a Department of Labor of the State of Alabama and to provide for its personnel, powers, functions, duties and the performance thereof," and "to prohibit executive, administrative, professional and supervisory employees from becoming members in certain labor organizations."

[fol. 340] In my judgment no one can successfully maintain that under the title indicated, two distinct classes and material professions are not contained in the title and body of the act. They are distinct and independent of each other, do not contribute to the full accomplishment of the purpose of the act, nor complement what is otherwise incomplete.

I observe with Chief Justice Stone that, "It follows irresistibly that both the title and the body of the act contain two subjects," and for this reason the Bradford Act must be pronounced a failure as a constitutional enactment and cannot be saved by the rule of severability.—*Ballentyne v. Wickersham*, supra.

Since the matter before us is of public moment (*Bland v. St. John*, 13 So. (2d) 16; *Fore v. Alabama State Bridge Corp.*, 242 Ala. 455, 6 So. (2d) 508), I wish to add further that Sections 7 and 18 of the Bradford Act impose upon such unincorporated, voluntary labor organizations illegal conditions on the liberty of contract, the freedom of assemblage and the right to speak, which voluntary and fundamental rights are guaranteed by our state and federal constitutions. —Constitution of Alabama of 1901, §§ IV and XV; Federal Constitution, First and Fourteenth Amendments.

Such is the effect of the illegal restraint imposed by the enactment in the use of the word "function" when considered as a comprehensive term. It cannot mean less than to operate and is not limited in its use employed in the

opinion of the majority. That is to say, this attempted legislation is a limitation on natural rights of individuals constituting the membership of unions. It denies the right of organization of local or national unions, denies the right of dissemination of union views and action touching its federation as a state or national union, and this amounts to a denial of the right of collective bargaining and due consideration of proposed strikes or picketting and the freedom of contract, local or national.

I am in accord with the decision of the Chief Justice in striking down Sections 12 and 17 of the Act and in holding Sections 13 and 14 void in part. The doctrine of severability [fol. 341] as construed by this court would not permit the elimination of the illegal sections indicated, and those in the opinion of the Chief Justice, and leave a constitutional enactment, under many authorities that obtain.

Dissenting Opinion

Brown, Justice (Dissenting):

Section 45, Article IV of the Constitution is, in part, a charter of our liberty and way of life. It definitely recognizes the fact that all wisdom does not reside in the Legislative Department of the State, that the Legislators in general originate and come from the great body of the common people who constitute the backbone of our civilization, but, nevertheless legislative bodies have in their midst and a part thereof the astute and cunning who represent special interests, above the common good of all the people. And it is a matter of legislative history running back to the foundation of the republic that "Jokers" are embodied in legislative acts to protect and serve private interests to the detriment of the common good, and sometimes to punish some group or faction. Hence said section provides, and we find kindred provisions in most every state in the union; *"Each law shall contain but one subject which shall be clearly expressed in its title."*

In *Ballentyne v. Wickersham*, it was observed: "There was a second abuse, against which this provision was levelled. The subject of the act 'shall be clearly expressed in the title.' The intention of this was, that the title of the act or bill should inform the members of the legislature, and perhaps the public, of the subject on which the former were

invited to vote and legislate. Matters foreign to the main objects of the bill had sometimes found their way into bills —surreptitiously, at times, it was charged—thus the members were induced to vote for measures in ignorance of what they were doing. The constitutional provision intended to render a continuance of this abuse impossible."—*Ballentyne v. Wickersham*, 75 Ala. 533, 536.

What is the subject of Act No. 298, referred to as the Bradford Act? It is not to police and regulate labor in [fol. 342] general nor to regulate organized labor in Alabama. The Act deals with more than one subject, both in its title and body.

The first subject of the Act is a State Department of Labor and that subject is expressed in the title, "To create a Department of Labor of the State of Alabama, and to provide for its personnel, powers, functions and duties and the performance thereof." This the act undertakes to do by Sections 3, 4 and 5, 7, 19 and 20.

The next subject just as clearly expressed in the title and dealt with in the body of the Act is, "to provide for the appointment by the Governor of *boards* of mediation and to provide for *their* personnel, powers, functions, duties and procedure." This was provided for in the Code of 1940, Tit. 26, § 28. Provision for the appointment of such boards from time to time is made in § 6 of the Act, and the jurisdiction, powers and functions are prescribed and they are authorized to act wholly and independently of the "Department of Labor of the State of Alabama." Said § 6 provides, *inter alia*, "The board of mediation shall make a finding of facts and a recommendation for settling such strike, lockout, or other dispute or disagreement, and, if such strike, lockout or other dispute or disagreemnt shall have been submitted for arbitration, a determination or award, which may be *enforced by any court of law or equity* in the same manner as other determinations or awards of matters submitted for arbitration. Such board shall remain in session no longer than is necessary to accomplish the purposes for which it was appointed, and in no event more than thirty days in which to make a determination, and the board shall be allowed an additional ten days time to make their findings of fact and recommendation for settling such strike, lockout, or other dispute, or disagreement, and, as soon as it shall have rendered its findings of fact, recommendation, deter-

mination or award, it shall be discharged. Copies of each find of facts, recommendation, determination and award shall be submitted to the Governor, and the Director of the Department of Labor and to each party or a representative of each party to such strike, lockout, dispute, or disagreement."

The only connection with or relation of the Board of Mediation to the Department of Labor is that a copy of the report [fol. 343] made to the Governor must be filed with the Director of the Department of Labor, and when the board makes its report it passes out of existence.

True the boards of mediation are empowered to deal with labor disputes and strikes and controversies between organized labor and the employers of labor. This presents a case strictly analogous to the case presented in *Ballentyne v. Wickersham*, 75 Ala. 533, 534, 535, 540, where the title was, "An Act to establish an inferior court of criminal jurisdiction for the County of Mobile, and to define the jurisdiction of said court and the criminal jurisdiction of Justices of the Peace in said county." The argument that the comprehensive subject was the administration of the criminal law in Mobile County was rejected and the act was held violative of the "second section of the fourth article of the Constitution of 1875", now § 45 of Art. IV of the Constitution, 1901, by the court speaking through Justice Stone, because both the title and body of the act contained and dealt with two distinct subjects, though both related to the enforcement of the criminal laws in Mobile County. That application of the constitution of that day is, or may be regarded by some, as Old Stone's fogyism, but lest we forget, that interpretation, along with its readoption without change, was carried into the present constitution, and is the voice of the people of Alabama, who ratified and adopted it.

Another distinct subject dealt with in the act, both in title and body is, "to prohibit political contributions by labor organizations."

What has that to do with a Department of Labor? It is more nearly related to elections and denies the right of organized labor to speak through the ballot box. True it is, such organizations sometimes see but dimly their real interest, and follow the "will of the wisp" but if they want to be foolish, they have that right under the constitution, so

long as other groups are allowed to do so. This is equal protection of law.

Sections 8, 9, 10, 11, 13, 14, 15, 16 and 18 relate to and deal with labor organizations, not through the department of labor, but through a direct legislative mandate, and form a definite and distinct subject, wholly apart from the dominant purpose of the act—To Create a Department [fol. 344] of Labor. The purpose of these sections is punative of labor, and no doubt *were* a dominant force in inducing the enactment of the law.

At the tail end of the Act, § 22 is added to effect a repeal in part of § 28, Title 26 of the Code of 1940, embodied in the chapter on industrial relation. Probably not half of the members of the Legislature had any knowledge that any such legislation was on foot. Certain it is there is no intemination in the title of the act that this repeal was contemplated.

Glamorous, fulsome and laudatory cannons of constitutional and statutory interpretation are often used to camouflage and bolster up doubtful and vicious legislation, and to obscure and set at naught the provisions of the supreme law of the law,—the constitution, which, in the end, must stand as a "pillow of Cloud by day and a pillow of fire by night" if our civilization and way of life are to be preserved, but such glamorous and fulsome rules of statutory interpretation cannot, in our jurisdiction, save an act which is double in its title and body, from the condemnation of § 45 of the Constitution of 1901.

I shall not here collate the authorities, but rest content to refer to the authorities cited by my brother Justice Thomas, in his dissenting opinion, in which, for reasons stated above, I concur.

[fol. 345] IN SUPREME COURT OF ALABAMA

[Title omitted]

APPELLANTS' APPLICATION FOR REHEARING—Filed June 5, 1944

Come the Appellants in the above styled cause and respectfully request the Court to grant them a rehearing in this case and upon said rehearing appellants pray that the judgment entered on, to-wit, the 25th day of May, 1944,

affirming the decree appealed from, be set aside and held for naught as having been improperly made and entered, and in lieu thereof a judgment be here entered reversing the decree appealed from, as we respectfully submit should have originally been done; and in support of the application for rehearing each appellant, separately and severally, submit the brief and argument that follows.

Horace C. Wilkinson, Fred G. Koenig, Attorneys for Appellants.

[fol. 346] IN THE SUPREME COURT OF ALABAMA

[Title omitted].

APPELLEES' APPLICATION FOR REHEARING—Filed June 9, 1944

Come the Appellees in the above styled cause and pray the Court to grant a rehearing therein, and upon such rehearing to change, correct or modify the opinion and judgment rendered therein by this Court on the 25th day of May, 1944, in so far as the Court therein affirmed the judgment of the Circuit Court of Jefferson County, Alabama, that Section 13 of the Bradford Act, and so much of Section 14 as related to the enforcement of the provisions of Section 13 of said Act, were unconstitutional and void (objections to which rulings are covered by Appellees' cross-assignment of error numbered 2); and that such portion of said opinion and judgment of the trial court be corrected and reversed; and in support of such application for rehearing, Appellees herewith submit the subjoined brief and argument.

Respectfully submitted, William N. McQueen, Acting Attorney General, George C. Hawkins, Assistant Attorney General, John E. Adams, James A. Simpson, John W. Lapsley, Attorneys for Appellees.

[fol. 347] IN SUPREME COURT OF ALABAMA

[Title omitted]

ORDER DENYING APPLICATIONS FOR REHEARING—June 22, 1944

It is ordered, that the application for rehearing filed by the appellants in this cause on June 5th, 1944, and the application for rehearing filed by the appellees on June 9th, 1944, after being duly examined and considered by the Court, be and are overruled.

[fol. 348] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 349] IN THE SUPREME COURT OF THE UNITED STATES

* * * * * * *

STIPULATION DESIGNATING PART OF RECORD TO BE PRINTED

Now Come the petitioners and the respondents and agree that the following parts of the record may be omitted in printing the record:

1. The pages headed "'Index" and "Organization" are to be omitted by agreement of counsel.

2. The printer will omit the affidavit of W. O. Hare on pages 28 to 42 inclusive, and in lieu of the part omitted insert this explanation:

> "The affidavit of W. O. Hare, which is Exhibit B to the petition is omitted by agreement of counsel because the affidavit was introduced in evidence and appears in full in the bill of exceptions, and its insertion in the record at this place would be needless repetition and is omitted by agreement of counsel.

3. The printer will omit the affidavit of Sam Roper beginning on page 42 and ending on page 45, and in lieu of the affidavit omitted insert this explanation:

> "The affidavit of Sam Roper, which is Exhibit C to the [fol. 350] petition, is omitted by agreement of counsel because it was introduced in evidence and appears in full in the bill of exceptions and its insertion here would

be a needless repetition and is omitted by agreement of counsel.

4. The printer will omit the affidavit of William Green beginning on page 141 and ending on page 165 of the record, and in lieu of the affidavit omitted insert the following explanation:

> The affidavit of William Green, which is Exhibit D to the petition, is omitted by agreement of counsel because it was introduced in evidence and appears in full in the bill of exceptions and its insertion in the record here would be needless repetition.

5. The printer will omit all of pages 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178 and that part of page 179 down to and including the words "filed in office 9:25 a. m. Oct. 3, 1943," and insert this explanation:

> The parts of the record dealing with pleas in abatement, motions to strike, demurrers to the petition, amended demurrer and motion to strike the affidavits of W. O. Hare, Sam Roper and William Green are omitted by agreement of counsel.

6. The printer will omit that part of page 196 beginning with the words, "Motion of William Green" in the middle of the page; and omit pages 197, 198, 199, 200 and that part of page 201 down to and including the words, "O. L. Andrews, Clerk Circuit Court" on page 201, and in lieu of the part omitted insert this explanation:

> Motions to strike the affidavits of William Green, Sam Roper and W. O. Hare are omitted by agreement of counsel.

7. The printer will omit pages 290 and 291 and the Clerk's Certificate immediately following page 291, and in lieu of the part omitted insert this explanation:

> [fol. 351] The Security for Cost of Appeal to the Supreme Court of Alabama, the Citation of Appeal, and the Clerk's Certificate are all in legal form and properly approved and are omitted by agreement of counsel.

Sam O. Wilkinson, Attorney for Petitioners. Wm. N. McQueen, Acting Attorney General. James A. Simpson, John W. Lapley, Attorneys for Respondents.

[fol. 352] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. —

ALABAMA STATE FEDERATION OF LABOR, et al., Petitioners,

vs.

ROBERT E. McADORY, ETC. et al.

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioners,

It Is Ordered that the time for filing petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 12th, 1944.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 22nd day of September, 1944.

[fol. 353] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 20, 1944

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted. Counsel are requested to discuss in their briefs and on oral argument the question whether the record presents one or more cases or controversies within the meaning of Art. III, Sec. 2 of the Constitution and to state the precise facts giving rise to, and the issues involved in, each such case or controversy, if any. The Solicitor General is invited to file a brief *amicus curiae* if he is so advised.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION No. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. MCADORY, as Solicitor of Jefferson County, Alabama, and HOLT MCDOWELL, as Sheriff of Jefferson County, Alabama.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA AND BRIEF IN SUPPORT THEREOF.

HORACE C. WILKINSON,
Birmingham 3, Alabama,
Counsel for Petitioners.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
Washington 5, D. C.,
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J-20435

Index.

	Page
Petition for Writ of Certiorari	1
Summary Statement of Matter Involved	2
Statement as to Jurisdiction	5
Questions Presented	6
Reasons Relied on for Allowance of Writ	7
Brief in Support of Petition for Writ of Certiorari	11
The Opinion of the Court Below	11
Jurisdiction	11
Statement of the Case	11
Specification of Errors	12
Argument	12
I. Sections 7 and 16, Respectively, Impose a Previous General Restraint on and Prohibit the Exercise of the Civil Rights of Assemblage and Speech in Violation of the First and Fourteenth Amendments to the United States Constitution	12
II. Aside From the Question of Civil Rights, Sections 7, 15 and 16 Constitute an Arbitrary and Unreasonable Exercise of the State Police Power	21
III. Sections 7, 15 and 16 Deny Petitioners Equal Protection of the Laws	25
IV. Sections 7 and 16 Deprive and Deny Petitioners Rights Granted and Protected Under the Wagner Act in Violation of Article VI of the United States Constitution	27
V. Sections 15 and 16 Are So Ambiguous as to Deny Due Process of Law	28
Conclusion	30
Exhibit "A"	33
Exhibit "B"	42

Table of Cases Cited.

	Page
Allen-Bradley v. Wisconsin Employment Relations Board, 315 U. S. 740	9, 28
Borden's Farm Products v. Baldwin, 283 U. S. 194	22
Cooley v. Board of Wardens, 12 How. (U. S.) 299	27
DeJonge v. Oregon, 299 U. S. 353	15, 18
Frost v. Corporation Commission, 278 U. S. 515	9, 25
Gibbons v. Ogden, 9 Wheat (U. S.) 1	27
Grosjean v. American Press Co., 297 U. S. 233	17
Hague v. C. I. O., 307 U. S. 496	8, 16
Herndon v. Lowry, 301 U. S. 242, 81 L. Ed. 1066	15
Hines v. Davidowitz, 312 U. S. 52	9, 27
International Text Book v. Pigg, 217 U. S. 106	17
Lanzetta v. New Jersey, 306 U. S. 451	9, 28
Lovell v. City of Griffin, 303 U. S. 44	17
McGoldrick v. Gulf Oil Corporation, 309 U. S. 414	27
Murdock v. Pennsylvania, 319 U. S. 105	8, 15, 16, 17
National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U. S. 1	16
Nebbia v. New York, 291 U. S. 502	8, 21
Schneider v. New Jersey, 308 U. S. 146	17, 20
Soss Manufacturing Co., 56 N. L. R. B. No. 70, 1944	28
Southern Railway v. Green, 216 U. S. 400	9, 25
State v. Butterworth, 104 N. J. L. 549, 142 A. 57, 58 A. L. R. 744	14
Thornhill v. Alabama, 310 U. S. 88	18
United States v. Cohen Grocery Co., 255 U. S. 81, 85 L. Ed. 516	28
United States v. Reese, 92 U. S. 214	9, 28
West Virginia v. Barnette, 319 U. S. 624	8, 19, 21
Whitney v. California, 274 U. S. 357, 71 L. Ed. 1095	15

Statutes Cited.

Act of Congress of February 13, 1935, Section 237-b, 28 U. S. C. A., Section 344-b	5
National Labor Relations Act, 49 Stat. 449	7, 27
Railway Labor Act, 48 Stat. 1185	26

Supreme Court of the United States

OCTOBER TERM, 1944

No.

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. MCADORY, as Solicitor of Jefferson County, Alabama, and HOLT MCDOWELL, as Sheriff of Jefferson County, Alabama.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

The above named petitioners respectfully petition for a writ of certiorari to review a decision of the Supreme Court of Alabama (*Alabama State Federation of Labor, et al.*, v. *Robert E. McAdory, as Solicitor, etc., et al.*, 18 Southern (2) 810, Adv. Sheets), rendered on May 25, 1944, application for rehearing denied by the Supreme Court of Alabama on June 22, 1944. Such decision affirmed in part and reversed in part a decree of the Circuit Court of Jefferson County.

SUMMARY STATEMENT OF MATTER INVOLVED.

This case involves an action for a declaratory judgment commenced by petitioners as plaintiffs in a suit filed pursuant to the Alabama Declaratory Judgment Statute (Title 7, Secs. 156-168, Code of 1940) in which it was sought to have declared as unconstitutional certain sections of what is commonly referred to as the Bradford Act (Act of 1943, p. 253), regulating labor organizations and their members.

The Bradford Act was passed by the Alabama Legislature in 1943, and became effective upon its approval by the Governor of Alabama on June 29, 1943. (A copy of the Act is appended to this petition and brief as Exhibit "A".) The Act is a comprehensive enactment dealing with labor. It establishes a Department of Labor and sets up mediation machinery; it seeks to license the functioning of labor organizations by requiring the filing of various reports and financial statements and the payment of annual fees; it regulates the internal affairs and activities of labor organizations; and it regulates various aspects of picketing, boycotting and striking. Civil and criminal liabilities are imposed for violations of the provisions of the Act. Only three sections of the Bradford Act (Secs. 7, 15 and 16) are involved under this petition for certiorari; the remaining sections of the Act were either held to be unconstitutional by the Alabama Supreme Court, or their validity was not challenged.

Section 7 prohibits labor organizations from "functioning" in the State of Alabama, except upon the compliance with certain conditions, among which are the filing of copies of constitutions and by-laws of local and international organizations; the payment of an annual fee; and the filing of an annual report containing the name and address of the organization, the names of its principal officers together with the total remuneration received by each officer, the date of election of such officers, the number of paid-up members, a complete and detailed financial statement of all fees, dues and other receipts, together

with a list of all disbursements with names of recipients and purposes therefor, and a complete statement of all assets owned by the organization.

Section 15 makes it unlawful for any labor organization or member or officer thereof to demand, collect or receive, directly or indirectly, from any person any sum of money (other than initiation fees or dues) "as a work permit or as a condition for the privilege to work".

Section 16 makes it unlawful for "any executive, administrative, professional, or supervisory employee" to become a member of or to be accepted into membership by any labor organization if such organization permits membership to employees other than those above named.

The petitioners (plaintiffs below) are the Alabama State Federation of Labor, the American Federation of Labor, the United Brotherhood of Carpenters and Joiners of America, Local No. 103 of such organization, and B. E. Jones, a member and officer of said Local No. 103 who is also an employee employed in an administrative or supervisory capacity (R. 2). The plaintiff labor organizations brought the action on their own behalf, as well as on behalf of their members located in the State of Alabama (R. 9, 10).

The defendants are Robert E. McAdory, Solicitor of Jefferson County; Holt McDowell, Sheriff of Jefferson County; and William McQueen, Acting Attorney General of the State of Alabama, state officials charged with enforcement of the Bradford Act (R. 18).

The complaint for declaratory judgment, in so far as relevant to the prayer that Sections 7, 15 and 16 be adjudged unconstitutional and void, alleged that Sections 7 and 16 imposed previous general restraints and prohibitions upon the exercise by plaintiffs of their civil rights of assembly and speech; that Sections 7, 15 and 16 constituted an arbitrary and unreasonable exercise of the state police power, depriving plaintiffs of the rights of liberty and property, protected under the Fourteenth Amendment; that Sections 7, 15 and 16 were discriminatory as to plaintiffs and in violation of the equal pro-

tection of the laws clause of the Fourteenth Amendment; that Sections 15 and 16 were so vague and indefinite as to violate the due process of law clause of the Fourteenth Amendment; that Sections 7 and 16 violated Article IV of the United States Constitution providing that the Constitution and Laws of the United States shall be the supreme law of the land, in that such sections deprive of rights granted and guaranteed under the National Labor Relations Act; and that Section 15 violated Article I, Section 10, of the United States Constitution, providing that no State shall make laws impairing the obligations of contracts, in so far as such section made illegal various provisions contained in existing constitutions and by-laws of plaintiff organizations. The complaint alleged specifically the manner in which plaintiffs were deprived of the various constitutional rights asserted, and prayed for an adjudication that Sections 7, 15 and 16, among others, be declared unconstitutional, null and void. (R. 2-24).

After certain preliminary motions were disposed of, the case went on for trial before three judges of the Circuit Court of Jefferson County. To obviate the taking of testimony, the parties stipulated as to the bulk of the factual matters alleged in the petition, and, in addition, affidavits by William Green (President of the American Federation of Labor), W. O. Hare (Secretary-Treasurer of the Alabama State Federation of Labor), and Sam Roper (President of the Alabama State Federation of Labor), setting forth certain facts in respect to the operation and functioning of labor organizations generally and in the State, were offered in evidence, with the agreement that each affiant would testify to the matters set out in his affidavit if he were sworn and examined in open court (R. 226). In addition, certain other witnesses were examined. Thus, either by stipulation of facts or the introduction of uncontradicted evidence there was competently proved: plaintiffs' interest in the proceeding and their standing to raise the constitutional issues; the manner in which labor organizations functioned and operated, with particular reference to the activities and functioning

of unions and their members as concomitants of the rights of assembly and speech; the manner in which plaintiffs were aggrieved by reason of the threatened enforcement of the various sections of the Act challenged as unconstitutional; the lack of a rational basis for the particular sections and their effect as a practical matter upon the ordinary functioning of labor organizations; and the manner in which such sections were discriminatory.

The Circuit Court held certain sections of the Act to be constitutional, among them being Section 7, held certain other sections to be unconstitutional, and refused to pass upon Sections 15 and 16 (R. 221). The judgment of the Circuit Court was appealed to the Supreme Court of the State upon assignments and cross-assignments of error, in which the constitutional issues were once again raised (R. 318-319). After hearing argument, the Supreme Court, on May 25, 1944, in a 4 to 2 decision, sustained the judgment of the Circuit Court and, in addition, declared that Sections 15 and 16 of the Bradford Act were constitutional. (A copy of the decision and dissents is appended to this Petition and Brief as Exhibit "B".) In its decision the Court resolved all procedural and jurisdictional questions in favor of petitioners and held that they had a standing to obtain an adjudication under the Alabama Declaratory Judgment Act concerning the constitutionality of Sections 7, 15 and 16 among others. Application for rehearing was made by both parties, which application was denied on June 22, 1944.

Sections 7, 15 and 16 of the Bradford Act are the only sections challenged by plaintiffs which the Supreme Court held constitutional, and, as before stated, are the only sections involved in this petition for certiorari and review.

STATEMENT AS TO JURISDICTION.

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U.S.C.A., Section 344-b.

This case is one in which the validity of Sections 7, 15 and 16 of the "Bradford Act" (Acts 1943, p. 253) is drawn in question upon the ground that such sections on their face and as construed in the opinion and judgment of the Supreme Court of Alabama are repugnant to the Constitution of the United States, and in particular to the Fourteenth Amendment thereto and to the First Amendment thereto. The decision of the Alabama Supreme Court was in favor of the validity of the sections in question. The case was finally disposed of by the courts of Alabama when the Supreme Court of that State on June 22, 1944, entered its order denying application for rehearing. Every possible remedy within the State has been exhausted. The Federal questions were raised at every possible stage in the proceedings below. Thus, the complaint challenged each of the sections as being in violation of the Federal Constitution; the assignments and cross-assignments of error raised such questions; the Federal questions were briefed and argued before the State Supreme Court, and the State Supreme Court passed upon the Federal questions in its opinion. Finally, the application for rehearing again raised the Federal questions.

On September 22, 1944, Mr. Justice Hugo L. Black issued an order extending the time within which to file a petition for writ of certiorari to October 12, 1944.

QUESTIONS PRESENTED.

The following Federal questions, raised and argued before and passed upon by the Alabama Supreme Court, are involved in the present petition for certiorari and review:

1. Does Section 7 of the Bradford Act, requiring the filing of certain statements and reports by labor organizations and the payment of a fee as a condition to the right of labor organizations to "function" in the State, and does Section 16 forbidding supervisory or administrative employees from joining or being admitted into membership into a labor organization, impose a previous general restraint on or constitute a denial of the exercise

by working people of their civil rights of assemblage and speech in violation of the First and Fourteenth Amendments to the United States Constitution?

2. Aside from the question of the deprivation of civil rights, do Sections 7 and 16, and Section 15 making it unlawful for labor organizations or their members to demand, collect or receive any sum of money (except initiation fees or dues) as a "work permit" or as a "condition for the privilege to work", constitute an arbitrary and unreasonable exercise of the state police power and deprivation of plaintiffs' rights of liberty, property and contract protected under the Fourteenth Amendment to and under Article I, Section 10, of the United States Constitution?

3. Are Sections 7, 15 and 16 discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment?

4. Do Sections 7 and 16 deprive or deny plaintiffs' rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution making the Constitution and Laws of the United States supreme?

5. Are Sections 15 and 16 prescribing certain crimes not known to the common law so ambiguous as to deprive of due process of the law in violation of the Fourteenth Amendment to the United States Constitution?

All of these questions were answered by the Alabama Supreme Court in favor of the validity of Sections 7, 15 and 16.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

Issues of the utmost importance to labor organizations and their many millions of members throughout the country are involved under this petition for review. The State of Alabama has attempted to license and condition the right of working people to assemble into and function as labor organizations, has sought to prohibit certain classes of employees from joining labor organizations and such

organizations from accepting such classes of employees into membership, and has proscribed the charging or receiving by labor organizations of any fees described vaguely and ambiguously as "work permits". Implicit in such legislation is the assertion by the State of the right to withhold, condition or regulate as it sees fit the right of individuals to assemble into and function as labor organizations. A decision by this Court of the issues presented under this decision will not only resolve similar issues which have arisen in other States which have enacted similar legislation, but will serve to define the allowable area of State control of labor organizations and their members and to determine whether the assemblage into and functioning in labor organizations by working people is a right protected as a concomitant of the civil right of assembly and speech, or is a mere privilege which the State can withhold or regulate or condition as it sees fit.

As more fully set forth in the brief attached hereto, it is petitioners' principal contention that the determination of the court below that Sections 7 and 16 do not previously restrain or deny rights of assembly and speech is contrary to the holdings of this Court in such cases as *Hague* v. *C.I.O.*, 307 U. S. 496; *Murdock* v. *Pennsylvania*, 319 U. S. 105; and *West Virginia* v. *Barnette*, 319 U. S. 624.

In addition, constitutional rights of a less fundamental, although no less important, status are asserted to have been denied by the legislation in question, and the determination of the court below in favor of the validity of the legislation to be in conflict with the rationale of many decisions of this Court. Thus, the determination of the Alabama Supreme Court on the question of the reasonableness of the exercise by the State of its police powers under the legislation in question is asserted to be in conflict with the decision of this Court in *Nebbia* v. *New York*, 291 U. S. 502; its determination on the question of whether the legislation is discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment is in conflict with the decision of this Court

in *Frost* v. *Corporation Commission*, 278 U. S. 515, and *Southern Railway* v. *Green*, 216 U. S. 400; its determination on the question of whether the legislation denies or withholds rights granted under the Wagner Act in violation of Article VI of the Federal Constitution is in conflict with the decision of this Court in *Hines* v. *Davidowitz*, 312 U. S. 52, and *Allen-Bradley* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; and its determination on the question of whether Sections 15 and 16 are so ambiguous as to deny due process of law in violation of the Fourteenth Amendment is in conflict with the decision of this Court in *Lanzetta* v. *New Jersey*, 306 U. S. 451, and *United States* v. *Reese*, 92 U. S. 214.

The issues involved in this petition are of a substantial nature, and many of them have not heretofore been determined by this Court. Similar drastically restrictive legislation directed against labor organizations and their members, involving the right of working people to form, join and assist labor organizations, and impairing the ability of labor organizations adequately to function in the interests of its members, has recently been passed in some six or seven states in addition to Alabama and threatens to be passed in other states. Although actions in law and equity to obtain an adjudication of the constitutionality of such legislative enactments have been instituted, this is the first case in which an appeal to the United States Supreme Court has been available. An adjudication of the issues in this case by this Court is necessary in order to set at rest many of the difficult and perplexing constitutional questions that have arisen by reason of the various above described enactments.

WHEREFORE, Your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Alabama, commanding that court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered 6 Div. 234, entitled "Alabama State Federation of Labor,

Local Union No. 103 United Brotherhood of Carpenters and Joiners of America, etc., et al., Appellants, vs. Robert E. McAdory, as Solicitor of Jefferson County, Alabama, et al., Appellees," and that the judgment of the Supreme Court of Alabama may be reviewed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and meet; and your petitioners will ever pray.

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Supreme Court of the United States

OCTOBER TERM, 1944

No.

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. MCADORY, as Solicitor of Jefferson County, Alabama, and HOLT MCDOWELL, as Sheriff of Jefferson County, Alabama.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

THE OPINION OF THE COURT BELOW.

The opinion of the Supreme Court of Alabama is reported in 18 Southern (2d) 810, Adv. Sheets (R. 321), application for rehearing denied by the Alabama Supreme Court on June 22, 1944. A copy of such opinion is appended hereto as Exhibit "B".

JURISDICTION.

The statement concerning jurisdiction is set forth in the petition and is incorporated herein by reference.

STATEMENT OF THE CASE.

The statement of the case appears in the petition and is incorporated herein by reference. There is no dispute concerning the facts involved, and such facts as are relevant are set forth in such statement and in the arguments that follow.

SPECIFICATION OF ERRORS.

The Supreme Court of Alabama erred in the following respects:

1. In holding that Sections 7 and 16 of the Bradford Act do not impose a previous general restraint on or constitute a denial of the exercise by petitioners of their civil rights of assemblage and speech in violation of the First and Fourteenth Amendments to the United States Constitution.

2. In holding that Sections 7, 15 and 16 do not constitute an arbitrary and unreasonable exercise of the state police power and a deprivation of petitioners' rights of liberty, property and contract protected under the Fourteenth Amendment to, and under Article I, Section 10 of, the United States Constitution.

3. In holding that Sections 7, 15 and 16 are not discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment.

4. In holding that Sections 7 and 16 do not deny petitioners of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution making the Constitution and Laws of the United States the supreme law of the land.

5. In holding that Sections 15 and 16, prescribing certain crimes not known to the common law, are not so ambiguous as to deprive of due process of the law in violation of the Fourteenth Amendment to the United States Constitution.

ARGUMENT.

I.

Sections 7 and 16, Respectively, Impose a Previous General Restraint on and Prohibit the Exercise of the Civil Rights of Assemblage and Speech in Violation of the First and Fourteenth Amendments to the United States Constitution.

It is to be noted at the outset that Section 7 of the Bradford Act prohibits labor unions from "*functioning*"

in the State of Alabama until and unless certain conditions imposed by the State are met or until labor organizations do what amounts to the taking out of a license and paying a license fee. The term "functioning", obviously, would include the doing of every act normally incident to the carrying on of labor activities by working people assembled into labor organizations for their mutual aid and protection, including the formation of such organizations, the holdings of meetings by members of such organizations, engaging in collective bargaining, and the dissemination of information by such organizations.

In order to determine whether the State can condition or license such functionings, it is necessary to determine what is the standing under the Constitution of the right of working people to assemble into and function through labor organizations for their mutual economic aid and protection. It is submitted that this right is one which is a concomitant of the right of assemblage and speech and has the same high standing as has the right of persons to assemble into political organizations for political purposes, or into religious organizations for religious purposes, or into scientific organizations for scientific purposes.

When the purpose of assemblage by working people into labor organizations and the nature of their activities after being formed into labor organizations are considered in the light of common knowledge, and in the light of the evidence in this case, it readily becomes apparent that labor organizations, like political associations or religious organizations, are simply groups of individuals gathered and assembled together for the more effective exercise, through joint action, of the constitutional rights to which each individual American is entitled and may lawfully exercise. Individual workers, being helpless as individuals to deal and cope with their employers who have at their command vast aggregations of capital and who are usually organized together in the form of corporations or employer associations, being ineffective as individuals to petition the government for redress or grievances and for protective legislation, and being unable as individuals

effectively to enlist sympathy and support in their efforts to maintain and advance their working conditions and to protect the means of their very existence, have assembled together to accomplish these purposes into voluntary unincorporated groups known as labor organizations.

The day-to-day functionings of labor organizations, be they local, state, national or international, are seen to constitute in their substance the practical and effective exercise of the rights of assembly, speech, press and petition. Thus, there is a constant holding of meetings, a constant solicitation of new members both by paid representatives and by the ordinary membership, the constant carrying on of educational programs, the constant attempt by speech, handbill, letter or pamphlet to enlist the aid and sympathy of the public in the common struggle to protect and improve working standards, of the legislatures, both state and national, to obtain favorable or protective legislation, and the constant attempt to present requests, views and thoughts to employers through the process of collective bargaining—in general, a constant, common consultation, exchange of views, gathering and spreading of information, and dissemination of information and views to the employer, the general public and the legislatures.

That the meeting and joining together by working people into labor organizations, and the carrying on of a common consultation and other activities for mutual aid and protection in economic matters, constitute the practical exercise of assembly and speech as protected under the First Amendment is no new or startling doctrine. The right of people peacefully to assemble for lawful purposes existed long before the adoption of the Constitution, is one of the inherent attributes of citizenship under a free government, and is found wherever free government exists. *State* v. *Butterworth*, 104 N.J.L. 549, 142 A. 57, 58 A.L.R. 744.

Labor unions constitute assemblage for common conference and action on a variety of subjects; political, legislative, economic, social. Each of these types of purposes

and objectives fall within the protected sphere of constitutional rights. As stated by Justice Jackson in *Murdock* v. *Pennsylvania*, 319 U.S. 105:

> "In my view the First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or information ends as well."

A generation before this pronouncement Justice Brandeis, in his concurring opinion in *Whitney* v. *California*, 274 U.S. 357, 71 L. Ed. 1095, announced a similar conclusion.

Moreover, the Supreme Court has expressly declared that these rights are protected not merely in the occasional gathering of people or the attempted speech on some specific isolated occasion, but more important, in the general right of organization of continuing groups for regular meetings and assemblages. *Herndon* v. *Lowry*, 301 U.S. 242, 81 L. Ed. 1066, upheld the constitutional right "to address meetings and organize parties." *DeJonge* v. *Oregon*, 299 U.S. 353, like the *Herndon* case turned on the right of individuals to form and organize groups, to solicit membership and to engage in the general dissemination of information through the medium of those organized groups.

The Supreme Court of Alabama deemed the functioning of labor organizations no different from the functioning of any commercial enterprise and declared that the assemblage of working people into labor organizations for purposes of mutual aid and protection and for the dissemination of information was merely incidental to the general functioning of labor unions. This overlooks entirely the purpose of and the function performed by the assemblage and use of speech and press by working people under labor organizations. The very significant line between the use of the printed or spoken word for discussion of issues of public importance and the use of the printed or spoken word for commercial and private purposes was

expressly and clearly recognized, for example, in *Murdock* v. *Pennsylvania, supra,* in the following words:

> "The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills."

The courts have expressly and for some years recognized and declared that the organizations and associations into which millions of American working men and women have gathered for mutual and community improvement, for advancement of the welfare of all working men and women, politically, socially and economically, do indeed constitute the exercise of these basic rights described in the cases cited above and are not analogous to commercial activities.

Chief Justice Stone, in his opinion in the case of *Hague* v. *C.I.O.*, 307 U.S. 496, determined that the guarantee of free speech and assembly under the First Amendment extended to protection against attempts by the officers of Jersey City to prevent the labor organizations involved in that case "from holding meetings and disseminating information whether for the formation of labor organizations or for any other lawful purpose." In that case, indeed, the purpose of holding meetings in Jersey City, with which the city officials were enjoined from interfering, "was to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work and other terms and conditions of employment." The injunction was sustained because this right was one safeguarded under the First Amendment, protected against infringement by the State under the Fourteenth Amendment.

The significance of union organization as a means of securing real effectuation for the individual worker of his constitutional right to contract freely is well summarized in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U.S. 1, 33.

If it be recognized that the "functioning" of labor organizations embodies with it the exercise by working people of rights of assembly and speech, in what manner, it can be asked, does Section 7 restrain or impair the exercise of such rights? The answer is clear. By requiring the filing of constitutions, by-laws and amendments thereto, and the filing of detailed annual reports and financial statements, the State has in effect undertaken to license labor organizations just as the State would license an ordinary commercial enterprise. In *International Text Book* v. *Pigg*, 217 U.S. 106, the Supreme Court held that the requirement by the State of Kansas that foreign corporations file a similar but much less detailed statement constituted in effect a licensing of the business.

An equally important restraint upon the functioning of labor organizations is the exaction of an annual fee which, although nominal in amount, is exacted solely as a license or permit fee or fee on the very right to function. *Murdock* v. *Pennsylvania*, *supra*, involved a similar tax, nominal in amount, which was declared invalid as one imposed upon the exercise of constitutional rights.

The Supreme Court has ever been diligent to strike down as unconstitutional any attempt by the State to impose any previous restraint upon the exercise of rights guaranteed in the Bill of Rights. *Lovell* v. *City of Griffin*, 303 U. S. 44; *Schneider* v. *New Jersey*, 308 U. S. 146; *Murdock* v. *Pennsylvania*, *supra*.

It is no defense of the statute to claim that the fees are not excessive or that the State will not deny the license on request. The assertion of the power to grant a license implies the assertion of the power to withhold it. If the State may insist that the rights of free speech, press and assembly can be exercised only on certain terms which go beyond the limits of the constitutional protection, it may insist on prohibiting the enjoyment of those rights altogether. The degree of burden is not the determining factor; it is the power which is asserted that is nonexistent. *Grosjean* v. *American Press Company*, 297 U. S. 233. Even if the license might be secured for the asking,

this would constitute no answer. *Thornhill* v. *Alabama*, 310 U. S. 88.

The Supreme Court of Alabama stated in the present case:

> "If we follow the argument of counsel for plaintiff to its ultimate conclusion, it is difficult to see where any effective legislation could be had concerning regulations of organizations of this character. We think the authorities which we have herein cited clearly demonstrate that they are subject to the police power of the state, and that the contention as to the violation of the constitutional provisions of free speech and assembly invalidates any of the provisions of the Act, is untenable."

There is not involved here any contention or suggestion that labor unions are "above the law" or beyond regulation. In so far as free speech and press and assembly are concerned, the cases make clear the extent to which that regulation may go. In so far as a union or its members engage in any activity which can properly be considered criminal, they are today subject to the provisions of the criminal law. It is this consideration which constitutes one of the cornerstones of American traditions of free speech. Laws may be passed to curb specific criminal conduct but not to curb the very exercise of the right of speech or assembly. Referring to the basic and inviolable nature of the rights embodied in the guarantees of the constitutional Bill of Rights, the Supreme Court has pointed out (*DeJonge* v. *Oregon*, *supra*):

> "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for

> free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Section 7 and the paying of a license fee thereunder are not directed to the cure of any particular abuses; organizations, whether good or bad, complying with Section 7, can continue to function as before. Section 7 is clearly directed to licensing the right of organizations to function at all.

Underlying all of the cases passing on the constitutionality of state interference with free speech, press or assembly is the basic distinction between the standards of constitutionality applied to legislation affecting rights related to property or to commercial enterprises and legislation related to the fundamental democratic freedoms of speech, press, assembly and worship.

This distinction is best expressed in the words of the Court in *West Virginia* v. *Barnette*, 319 U. S. 624:

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction to prevent grave and immediate danger to interests which the State may lawfully protect."

Section 16, which makes it unlawful for any administrative or supervisory employee to become a member in or be accepted for membership by labor organizations, even more clearly operates to prohibit the exercise of constitutional rights by certain classes of working people. As seen by one of petitioners' exhibits (R. 268), numerous labor organizations have traditionally enrolled administrative or supervisory employees into membership, and many such employees have traditionally sought membership in labor organizations for their mutual aid and protection. The right thus to assemble into an organization for economic ends is as inviolable as the right of other persons to assemble into organizations for religious or political purposes. The right cannot be abridged for reasons of race, creed, color, social position or, as in the present case, hierarchy of employment. Consideration by the assemblage itself of whether the purposes of the assemblage can be accomplished by admitting certain classes of supervisory employees has in the past served to eliminate those categories whose presence in the assemblage would defeat its purposes, and in the future must necessarily continue to determine the question of exclusion or inclusion if freedom of assemblage is to have any content or any meaning. As stated in *Schneider* v. *New Jersey, supra*:

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

It may be felt expedient in certain sections of the country to prohibit membership into religious organizations because of color, or into political organizations because of religious belief. To prohibit the petitioner, Jones, from joining and assembling with his fellow workers in an organization to which he has belonged for years, and which is willing to accept him into membership, is a denial of a right fundamental to our society.

which cannot find justification in belief as to its desirability.

II.

Aside From the Question of Civil Rights, Sections 7, 15 and 16 Constitute an Arbitrary and Unreasonable Exercise of the State Police Power.

Let us assume civil rights are not violated by Secs. 7, 15 and 16. Since the decision of this Court in *Nebbia* v. *New York*, 291 U. S. 502, it is clear that the State has full freedom to regulate and condition the exercise of rights other than those protected under the First Amendment when there is any rational basis for so doing. *West Virginia* v. *Barnette*, *supra*. Whether there is or is not a rational basis is for this Court to determine, and in making this determination the Court is guided by somewhat less vague or inarticulate premises than the phrases of the Fourteenth Amendment or the tests of arbitrariness or unreasonableness. The problem is a severely practical one, dependent upon the facts and circumstances of each individual case. In determining whether any particular legislation has rational basis, this Court has made the following inquiries:

Do circumstances or economic conditions exist which require the intervention of the State? Is there in fact a danger to the health, safety or well-being of members of the State in the existing situation? Will the method adopted by the State guard against it? Is the burden on the individual too heavy to justify the restriction? Are the means adopted by the State reasonably related or relevant to the objectives sought, or do they impose hardships in disproportion to the benefits which the State seeks to confer? Is it possible to secure the objects sought without impairing essential rights and principles? And finally, are the interests of the public generally, as distinguished from those of a particular class, such as to require the interference of the State?

What are the factual or economic circumstances which justify the attempted regulations or prohibitions contained

under Sections 7, 15 and 16? In the first place, it is significant that the Alabama Legislature undertook no legislative investigation under which the facts in respect to the operations of labor organizations within the State and their effect upon the public could be ascertained. In the *Nebbia* case, *supra*, and in similar cases findings of legislative investigatory bodies were heavily relied upon by this Court in affording justification for the particular regulations. In the present case it was affirmatively shown, and without contradiction by the Attorney General, that no particular abuses existed which reasonably would require legislative interference in respect to the matters restricted under Sections 7, 15 and 16 of the Bradford Act. Thus, for instance, in regard to Section 7 the State did not rely upon any existing, abusive conditions or practices in respect to union financial matters. On the contrary, the evidence affirmatively showed that unions operating in the State regularly made full financial accounting to their membership. Neither did the State rely upon or claim any monopoly upon the supply of labor by labor organizations within the State as a justification for the public filing of financial statements. While the State, of course, has the power to anticipate evils or abuses, this power of anticipation must be premised upon conditions which give a reasonable basis for the apprehension and cannot be predicated upon "any financial conjecture." *Borden's Farm Products* v. *Baldwin*, 283 U. S. 194.

On the other hand, Section 7 would burden unions out of all proportions to any public benefit that Section 7 might bring. In order to be assured that they would not be penalized civilly in the sum of $1,000 for a possible violation of Section 7 (as set forth under Section 8), it would be necessary for each union, regardless of its size or finances, to hire, if not certified public accountants, at least persons with a better knowledge of accounting practices and procedures than that possessed by working men and women who, as in the large majority of cases, have, without compensation, assumed the job of president or secretary or treasurer of a local union in the past. Further, the possi-

bility of criminal penalties for failure to properly make the reports would operate to discourage many otherwise available workers from accepting union positions.

Similar considerations are applicable to Section 15. The State can point to no prevailing abusive conditions in respect to the collection by unions of anything which could be classified as "work permits." On the contrary, the collection under certain conditions of sums of money, although not as initiation fees or dues, constitutes a practice traditionally adopted in union constitutions and by-laws and was shown by the evidence to be indispensable to the proper functioning of labor organizations. Section 15 constitutes an outright and unconditional prohibition upon the collection of all fees which are not initiation fees or dues if employment is contingent upon the payment of such fees. Section 15 is not designed merely to prevent the fraudulent or arbitrary collection of fees or the collection of fees in excessive amount and without relation to any benefits received by the person paying the fee.

Accordingly, Section 15 makes it a crime for labor organizations to engage in such accepted practices as the following: The collection of nominal fees from non-member apprentices in return for which apprentices receive the guidance and teaching of the journeymen members of the union with whom they are employed, and the protection of the collective bargaining agreement that has been obtained through the efforts and sacrifices of the journeymen members in whose trade they are apprenticing; the charging of fees to temporary workers (who do not desire to join a union and pay its initiation fees) for permission to work under the highly beneficial terms of an all-union contract; and the requiring of the payment of a fee as a condition of working under an all-union contract in the case of a transfer from one local union to another during the period necessary for the local to investigate the record, the capacity and integrity of the person applying for the transfer before he is admitted to membership.

The State cannot and does not attempt to point to any abusive conditions as justification for the prohibition con-

tained in Section 15, and it is submitted that there is no public interest to be served by the blanket prohibition of the collection of any and all work permit fees that is in any way commensurate with the harm done to labor organizations in outlawing these traditional practices concerning which there has been no complaint.

Finally, in respect to Section 16 there is likewise a complete lack of rational basis for the prohibition against so-called "supervisory" or "administrative" employees (assuming these are identifiable classes) joining labor organizations which likewise take into membership non-supervisory or non-administrative employees. The State can point to no abusive conditions arising because of the fact that supervisory employees are members of labor organizations, and the evidence affirmatively shows that such practice has resulted in no harm to the public. As seen from the bulletin prepared by the United States Department of Labor's Bureau of Labor Statistics (R. 269):

> "Foremen membership in unions and the inclusion of foremen under agreements covering production workers has long been the usual practice in the printing and building trades, in the metal trades insofar as they operate on a craft basis, in many of the railroad trades, and to a greater or lesser extent, among the teamsters, longshoremen and others."
>
> * * * * *
>
> "During the last few years there has been a pronounced movement on the part of foremen, especially in large companies, to organize into unions and to bargain collectively with their employers."

Surely, unless evidence was forthcoming that the traditional practice of a large number of trade unions to take into membership minor supervisory employees has resulted in any great detriment to the public or in any inability of management to function, it cannot be declared that deprivation of the very fundamental right of the individual to seek to join with his fellow employees for his protection and advancement has any basis in existing circumstances, or that any real or commensurate benefit to the public would thereby result.

III.

Sections 7, 15 and 16 Deny Petitioners Equal Protection of the Laws.

In making classifications and imposing limitations upon particular groups, the State must act on the basis of a reasonable relationship to the object sought and not on the basis of any arbitrary and unreasonable classification, and all within a class must be treated equally. *Frost* v. *Corporation Commission*, 278 U. S. 515; *Southern Railway* v. *Green*, 216 U. S. 400.

It is submitted that under the principles announced in the above decisions the requirement of the filing of financial statements under Section 7, which is directed solely against labor organizations, discriminates as between them and all other types of enterprise in general and employer or trade associations in particular. Business corporations or public utilities chartered and licensed by the State are not required to make equivalent disclosures. If, as asserted by the Alabama Supreme Court, the fact that labor organizations extend throughout a large body of the economic life of the State constitutes a reason for requiring such detailed accounting from them, then the operations of the public utilities or the great business corporations or the American Legion or the Farmers Grange, or of organized religion or of political organizations which extend into and affect every branch of public life, should likewise be required to file similar reports.

Even more strikingly discriminatory is the fact that labor associations are subjected to regulation while employer associations and their agents, which associations are set up and established and function for the same purpose of representation on behalf of employers as labor organizations function on behalf of employees, are not licensed and required to file financial statements. Labor organizations on the one hand and employer associations on the other hand are parties to an economic struggle for a fair share of the joint product of capital and labor; these parties are in continuous relationship of either opposition or conciliation in the same field of industrial

relationships. Why should not both parties to this economic struggle be treated alike?

Finally and in any event, by exempting, under Section 2 of the Bradford Act, labor associations of railroad employees from the requirement of Sections 7, 15 and 16, the State has discriminated against labor associations of non-railroad employees. This exclusion is manifestly contrary to the principle that all within the class against which any particular legislation is directed—in this case labor organizations—must be treated alike.

The record shows that railroad labor organizations and non-railroad labor organizations function and operate identically in so far as concerns all matters which are touched upon by Sections 7, 15 and 16 (R. 2 & 232). The Alabama Supreme Court upheld the exclusion of railroad unions not because of any differences in operations or practices as between railroad and non-railroad unions, but because railroad unions come under the provisions of the Railway Labor Act. While this fact may constitute a difference between railroad unions and all other classes of unions, nevertheless this difference has absolutely no relevance to the purposes of the legislation for which the classification is proposed. The Railway Labor Act does not attempt to license railroad organizations or to require the filing of detailed financial statements. The Railway Labor Act does not prohibit "administrative" or "supervisory" employees from becoming members of railway labor unions, nor does it prohibit the collection of "work permit" fees.

A railway union, such as, for instance, one associated with the International Association of Machinists, can charge a "work permit" fee in the case of a transfer from a non-railway union to it, whereas a railway union affiliated with the same International and operating under the same constitutional provisions could not make such a charge in the case of a transfer of a member of a railway union to it; a supervisory employee could join a railway union but could not join a union of non-railway employees, even though both unions are affiliated with the same parent organization. It is submitted that there is no justification in fact or hypothesis for this arbitrary delineation.

IV.

Sections 7 and 16 Deprive and Deny Petitioners Rights Granted and Protected Under the Wagner Act in Violation of Article VI of the United States Constitution.

Sections 7 and 16 operate to impose restraints or conditions upon the exercise of rights unconditionally granted by the National Labor Relations Act; as such they must be declared illegal as being in conflict with Federal legislation in a field in which Congress has paramount authority under Article VI of the United States Constitution which declares that the Constitution and Laws of the United States are supreme.

Section 7, as we have seen, licenses or conditions the very right of individuals to form and join labor organizations, and the right of labor organizations to function. Section 16 forbids certain classes of employees to join labor organizations. These are rights specifically and freely granted under Section 7 of the National Labor Relations Act, pursuant to a valid Congressional purpose of minimizing labor disturbances that might interfere with interstate commerce. As such, these rights must necessarily be exercised free from any restraint by the State; otherwise the broad Federal objective might be forestalled or nullified by State legislation. Assuredly, the State can have no power to license rights set up or established under valid Federal legislation. When Congress passes legislation in the effectuation of powers conferred upon it by the Constitution and in a field in which it has plenary power to assert the right to legislate, all State enactments inconsistent with the Federal legislative plan are superseded, and any State legislation which conflicts with the Federal legislation must fall. Const. Art. VI, cl. 2; *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1; *Cooley* v. *Board of Wardens*, 12 How. (U. S.) 299; *Hines* v. *Davidowitz*, 312 U. S. 52; *McGoldrick* v. *Gulf Oil Corp.*, 309 U. S. 414.

Although the Wagner Act contains no restriction upon

the right of administrative or supervisory employees to join labor organizations but, on the contrary, specifically enforces that right (in the matter of *Soss Manufacturing Co.*, 56 N. L. R. B. No. 70, 1944).

Section 16 makes it a crime for such classes of employees to join unions. Similarly, the right granted to employees under Section 7 of the Wagner Act "to bargain collectively through representatives of their own choosing, and to engage in concerted activities", would be frustrated if, as declared under Section 7 of the Bradford Act, labor organizations cannot "function" unless they are licensed, pay an annual fee, or otherwise comply with various conditions prescribed by the State of Alabama. Such attempts on the part of the State to limit or condition rights granted by Congress in the effectuation of a valid Federal purpose must necessarily be declared invalid. *Allen-Bradley* v. *Wisconsin Employment Relations Board*, 315 U. S. 740.

V.

Sections 15 and 16 Are So Ambiguous as to Deny Due Process of Law.

Sections 15 and 16 subject persons engaging in customary and usual practices—practices not constituting crimes under the common law—to fine and imprisonment. While the State may thus create crimes, it is incumbent upon it to be sufficiently explicit so as to inform the public what conduct on the individual's part will render him liable to criminal penalties. A statute, and particularly a criminal statute, which is so vague, indefinite and uncertain as to its meaning that the things and matters prohibited and its application to particular persons are not reasonably ascertainable, is void under the due process clause of the Fourteenth Amendment. *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Reese*, 92 U. S. 214, 23 L. Ed. 563; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, 85 L. Ed. 516.

Section 15 makes it a crime for a union or its representative to receive any sum (not constituting initiation fees or dues) as a "work permit". What is a "work permit"? No definition of the term is attempted in the

Act, and it is submitted that the term has not achieved such a meaning in common parlance as to indicate clearly and unequivocally to the average citizen just what is intended. Do the three traditional practices discussed under Part IV of this brief constitute the exaction of a "work permit" fee, and is it the intention of the Legislature to outlaw them? The Alabama Supreme Court declines to pass upon this specific question and states that it will determine whether any particular practice comes within the term "work permit" when and if the specific case is presented, but at the same time, the Court declares that the term "work permit" is not ambiguous. Thus, the State Court requires that citizens speculate as to whether any particular practice does or does not come within the prohibition of the law. Can any person of common intelligence be expected to know precisely what is meant by a "work permit"? Obviously, labor organizations and their members are obliged to guess as to which of their established practices now constitute crimes in violation of Section 15.

Similarly with the use of the terms "executive," "administrative", "professional", or "supervisory" in Section 16, forbidding employees of those categories to join labor organizations. Again, no definitions of these terms are set forth in the Act. The National Labor Relations Board, in its nine years of history, has been able to evolve no satisfactory definition of a "supervisory employee", but depends upon the record made before it in each particular case. Is it possible for a clerk having two subordinates working alongside of him to determine whether he is a supervisory or an administrative employee? Or for a "lead man" in a machinists' shop? Assuredly, men of ordinary intelligence must guess as to just what categories can be considered to be included in the broad terms "administrative" and "supervisory".

It is respectfully submitted that Sections 15 and 16 are unconstitutional because they are ambiguous and not susceptible of any exact interpretation so as reasonably to inform the public of the nature of the practices which the State has declared to be criminal.

CONCLUSION.

It is respectfully submitted that, under the decisions cited and discussed in the foregoing arguments, it is clear that petitioners have been denied and deprived of rights granted and secured under the Constitution of the United States, and that the decision of the Alabama Supreme Court should be reversed.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. MCADORY, as Solicitor of Jefferson County, Alabama, and HOLT MCDOWELL, as Sheriff of Jefferson County, Alabama.

APPENDIX TO PETITION AND BRIEF, CONTAINING EXHIBITS "A" AND "B".

J-29435

Exhibit "A".

No. 298 AN ACT S.-341 Bradford

An Act To create a Department of Labor of the State of Alabama and to provide for its personnel, powers, functions, and duties and the performance thereof, to provide for the appointment by the Governor of board of mediation, and to provide for their personnel, powers, functions, duties, and procedure, to regulate the activities and affairs of labor organizations and to require reports thereby, to make unlawful interference with the right to work or with the obtaining, use, or disposition of materials, equipment, or service, to regulate the exercise of the right to strike, to prohibit the collection, receipt, or demand of money for the privilege of working, to prohibit executive, administrative, professional, or supervisory employees from becoming members in certain labor organizations, to prohibit political contributions by labor organizations, to create civil liability and to establish civil and criminal penalties and remedies for the violation of this Act and to provide for the enforcement thereof, to make an appropriation for the administration of this Act, and to repeal subsection (2) of Section 3, and subsection (3) of Section 3, and Section 28 of Title 26 of the Code of Alabama.

Be It Enacted by the Legislature of Alabama:

Section 1. DECLARATION OF POLICY. The right to live involves the right to work. The public and working men and women must be protected. The activities of labor organizations affect the social and economic conditions of the State and the welfare of its citizens. It is declared to be the policy of this State, in the exercise of its police power and in the protection of the public interest, to promote voluntary and peaceful settlement and adjustment of labor disputes and to regulate the activities and affairs of labor organizations, their officers, agents, and other representatives in the manner and to the extent hereinafter provided.

Section 2. When used in this Act, the terms defined shall have the meaning here ascribed to them unless it clearly appears from the context that some other meaning is indicated: (a) "Labor Organization" or "Labor Union" shall mean every organization, association, group, union, lodge,

local, branch, or subdivision thereof, whether incorporated or not, having within its membership employees working in the State of Alabama, organized for the purpose of dealing with employer or employers concerning hours of employment, rates of pay, or the tenure or other terms or conditions of employment, *but such term or terms shall not include any labor organization or labor union the members of which are subject to the Act of Congress known as the Railway Labor Act.* (b) "Labor Dispute" shall include any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee, provided that this definition shall not relate to a dispute between an individual worker and his employer. (c) "Outlaw" or "Wildcat" strike shall mean any strike not authorized by vote as provided in Section 13 of this Act.

Section 3. There is hereby created the Department of Labor of the State of Alabama, which shall be an executive and administrative department of the State.

Section 4. The Department of Labor shall be headed by, and shall be under the direction, supervision and control of, an officer who shall be known and designated as Director of Labor. He shall be responsible to the Governor for the administration of the Department of Labor and shall be appointed by and shall hold office at the pleasure of the Governor. Vacancies in the office for any reason shall be filled in the same manner as original appointments are made. Before entering upon the discharge of his duties the Director shall take the constitutional oath of office as provided for under the Constitution and shall execute bond in such penalty as may be prescribed by the Governor, conditioned upon a faithful discharge of his duties and payable to the State of Alabama. The premium on his bond shall be paid out of the State Treasury as like bonds of State Officers. The annual salary of the Director of Labor shall be fixed by the Governor but shall not in any event exceed $5,000 per annum and shall be payable at the same time and in the same manner as the salaries of other State officers. The Director shall devote his full time to his official duties and shall hold no other remunerative position while serving as Director of the Department of Labor. The Director of Labor shall maintain his office in the State Capital.

Section 5. (a) It shall be the duty of the Director of the Department of Labor, unless herein otherwise expressly provided, to administer this Act, and to advise the Governor with respect to the provisions hereof. He shall have authority to employ such assistants as may be necessary in the discharge of his official duties and all such assistants shall be subject to the Merit System Act (Title 55, Chapter 9, Code of 1940), and shall be paid in the same manner as other State employees.

(b) To the end that strikes, lockouts, boycotts, blacklists, and discriminations may be avoided, the Director shall have authority and it shall be his duty to investigate labor disputes and to promote the peaceful and voluntary adjustment and settlement thereof.

(c) The Director shall keep a permanent record of his official acts and proceedings and shall keep the Governor fully informed with respect thereto, and shall make an annual report to the Governor in writing covering the activities and accomplishments of the Department of Labor during the preceding fiscal year.

(d) It shall be the duty of the Director to make available to any board of mediation appointed by the Governor pursuant to Section 6 hereof all data and information in his custody or possession relevant or pertinent to any matter which such board of mediation may have been appointed to consider, and to render to any board of mediation such assistance as it may request of him in the discharge of its official duties.

* Section 6. BOARDS OF MEDIATION. The Governor may, whenever he considers it expedient, appoint a board of mediation consisting of three members, for the purpose of gathering facts and information and hearing evidence concerning the cause of any strike, lockout, or other dispute or disagreement between employees or between any employer and his employees, for the purpose of making recommendations for the peaceable solution thereof, and if the parties involved in such strike, lockout or other dispute or disagreement shall in writing submit to such board such strike, lockout or other dispute or disagreement for arbitration, which written submission must contain an agreement to abide by the determination or award of the board, then also for the purpose of arbitrating such strike, lockout or other dispute or disagreement. One member of the board shall be a person who, on account of his previous employment or affiliations, shall be generally classified as a representative of employers; one member of the board shall be a person who,

on account of his previous employment or affiliations, shall be generally classified as a representative of employees; one member of the board shall represent the interest of the public, shall not be generally classified as a representative of employers or of employees and the member representing the public shall be chairman of the board. The Governor may, if he so elects, serve as one of the three members thereof, in which event the Governor shall represent the interests of the public and serve as chairman of the board. Members of such board shall be paid their actual travel expenses and twenty dollars per day for each day the board is necessarily in session, except that the Governor shall not be entitled to any such per diem allowance. The board of mediation shall have the same power and authority to subpoena witnesses and to compel the production of books, records, documents, and papers as the Director of Industrial Relations or the members of the board of appeals have under Title 26, Chapter 1, of the Code of Alabama, and the same power and authority to enter any place of employment, place of public assembly or public building as the Director of Industrial Relations has under Title 26, Chapter 1, of the Code of Alabama. The board of mediation shall make a finding of facts and a recommendation for settling such strike, lockout, or other dispute or disagreement, and, if such strike, lockout or other dispute or disagreement shall have been submitted for arbitration, a determination or award, which may be enforced by any court of law or equity in the same manner as other determinations or awards of matters submitted for arbitration. Such board shall remain in session no longer than is necessary to accomplish the purposes for which it was appointed, and in no event more than thirty days in which to make a determination, and the board shall be allowed an additional ten days time to make their findings of fact and recommendation for settling such strike, lockout, or other dispute, or disagreement, and, as soon as it shall have rendered its findings of fact, recommendation, determination or award, it shall be discharged. Copies of each finding of facts, recommendation, determination and award shall be submitted to the Governor, and the Director of the Department of Labor and to each party or a representative of each party to such strike, lockout, dispute, or disagreement.

Section 7. Every labor organization functioning in Alabama shall within sixty days after the effective date of

this Act, and every labor organization hereafter desiring to function in Alabama shall, before doing so, file a copy of its constitution and its by-laws and a copy of the constitution and by-laws of the national or international union, if any, to which the labor organization belongs, with the Department of Labor, but this provision shall not be construed to require the filing of any ritual relating solely to the initiation or reception of members. All changes or amendments to the constitution or by-laws, local, national or international, adopted subsequent to their original filing must be filed with the Department of Labor within thirty days after the adoption thereof.

Every labor organization functioning in the State of Alabama and having twenty-five or more members in any calendar year shall annually on or before February first in the next succeeding calendar year file with every member of their respective labor organizations and with the Director of the Department of Labor a report in writing showing the facts hereinafter in this section provided as of the close of business on the thirty-first day of December next preceding the date of filing. Such report shall be filed by the secretary or business agent of such labor organization and shall show the following facts: (1) The name of the labor organization; (2) the location of its principal office and its offices in Alabama; (3) the name of the president, secretary, treasurer and other officers, and business agents, together with the salaries, wages, bonuses, and other remuneration paid each, and post office address of each; (4) the date of regular election of officers of such labor organization; (5) the number of its paid up members; (6) a complete financial statement of all fees, dues, fines, or assessments levied and or received, together with an itemized list of all disbursements, with names of recipients and purpose therefor, covering the preceding twelve (12) months; (7) a complete statement of all property owned by the labor organization, including any monies on hand or accredited to such labor organization, which said report shall be duly verified by the oath of the president, secretary, or some other regularly selected and acting officer of such labor organization having knowledge of the facts therein stated. It shall be the duty of the Director of Labor to cause to be printed and to make available to the public forms for making such report. At the time of filing each such report it shall be the duty of every such labor organization to pay the Director of Labor an annual fee therefor in the sum of two dollars.

The Director of Labor shall receive, file and index the reports provided for in this section of this Act. The records provided for herein shall be made available by the Director of Labor in his office to the Governor of Alabama for examination.

It shall be unlawful for any fiscal or other officer or agent of any labor organization to collect or accept payment of any dues, fees, assessments, fines, or any other monies from any member while such labor organization is in default with respect to filing the annual report required in this section.

Section 8. Every person shall be free to join or to refrain from joining any labor organization except as otherwise provided in Section 16 of this Act, and in the exercise of such freedom shall be free from interference by force, coercion or intimidation, or by threats of force or coercion, or by intimidation of or injury to his family.

Section 9. It shall be unlawful for any person by the use of force or violence, or the threat of the use of force or violence, to prevent or to attempt to prevent any person from engaging in any lawful vocation within this state.

Section 10. It shall be unlawful for any person acting in concert with one or more other persons, to assemble at or near any place of employment in this State and by force or violence or threat thereof prevent or attempt to prevent any person from engaging in any lawful vocation, or for any person acting either by himself, or as a member of any group or organization or acting in concert with one or more other persons, to promote, encourage or aid in any such unlawful assemblage.

Section 11. It shall be unlawful for any person, however, near to or distant from any place of employment in this State, to hinder, interfere with, or prevent, by the use within this State of threats, intimidation, force, coercion or sabotage, the obtaining use, or disposition of materials, equipment or service by the employer or operator of such place of employment.

Section 12. It shall be unlawful, in and about the business of an employer, for any employee to refuse to handle, install, use or work on any particular materials, equipment or supplies because not produced, processed or delivered by members of a labor organization. Provided, however, nothing herein shall be construed to prevent employers and labor organizations from contracting in writing for the use solely of union-made materials, equipment or supplies.

Section 13. Except as otherwise specifically provided in this Act, nothing herein contained shall be construed to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this Act be so construed as to invade unlawfully the right to freedom of speech. No strike shall be had in any business, plant or in any unit thereof except when such strike is authorized by the vote of the majority of the regular employees working in such business, plant or in such unit thereof, expressed by a secret written ballot. Within 24 hours after the taking of such ballot, if the vote authorizes a strike, the officers or members of the labor organization conducting such ballot shall make and file with the Department of Labor a written report of such balloting showing: (1) the number of persons voting for the strike; (2) the number voting against the strike; (3) the total number of employees working in the business, plant or unit in which the strike is proposed; (4) a statement that no person not working in such business, plant or in such unit thereof cast a ballot in such vote. This report shall become a permanent public record of the Department of Labor, and if wilfully false, the person or persons making it shall be guilty of perjury and shall be punished as provided by the laws of this state for the crime of perjury. A failure to make such report within the time required shall be a misdemeanor.

It shall be unlawful for any person at any time or place by force or the threat of force to seek to secure or prevent attendance at any meeting or voting place at which any strike vote is taken or to influence the vote of such employee at such meeting or voting place by the use of force, coercion or intimidation or by threat of force or coercion by the offering of a reward of the threat of loss of employment or membership in a labor organization and any person using such force, coercion or threats or offering of rewards or withholding of membership from labor organizations or any person encouraging, aiding or abetting in such prohibited conduct shall be guilty of a misdemeanor.

Section 14. Any person, or two or more persons, who take part in, or agree among themselves or enter into a conspiracy to cause, what is known as an outlaw or wild cat strike as defined in this act, or who induce, urge, advise and participate in any unlawful walk-out or any unlawful obstruction of work or ways or means or process of work thereby causing stoppage of work in any plant

or in any unit thereof affected thereby shall be guilty of a misdemeanor.

Section 15. It shall be unlawful for any labor organization, any labor organizer, any officer, agent, representative or member of any labor organization, or any other person, to collect, receive or demand, directly or indirectly from any person, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege to work; provided, however, this shall not prevent the collection of initiation fees or dues.

Section 16. It shall be unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional, or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional, or supervisory capacity. The provision of this Section shall not be construed so as to interfere with or void any insurance contract now in existence and in force.

Section 17. It shall be unlawful for any labor organization or any organization of employers of labor to make any financial contribution to any political party or to any person who may be a candidate for any political or party office, or to the committee of any political party or of any candidate for office as a part of the campaign expenses of such party, person or committee, or to expend any funds in furtherance of the candidacy of any candidate for public office.

Section 18. PENALTIES: If any labor organization violates any provision of this Act, it shall be penalized civilly in a sum not exceeding one thousand dollars ($1,000.00) for each such violation to be recovered as a penalty in the Circuit Court of the County in which the violation occurred, the action being brought in the name of the State of Alabama by the Circuit Solicitor of the Circuit in which the violation occurred, and it shall be the duty of the Circuit Solicitor of any Circuit in which any such violation occurs to institute and prosecute such action. The doing of any act forbidden or declared unlawful by the provisions of this Act, except where a penalty is specifically provided herein, or the commission of any offense herein declared to be a misdemeanor, shall constitute a misdemeanor, and shall be punishable by a fine not exceeding five hundred dollars ($500.00), or by

imprisonment at hard labor for not exceeding twelve months, or both.

Section 19. The provisions of this Act shall be cumulative of all other existing laws upon the subject, and in the event of a conflict between existing laws and the provisions of this Act, then and in that event the provisions, offenses and punishments set forth herein shall prevail over such existing laws.

Section 20. There is hereby appropriated out of any general funds in the State treasury not otherwise appropriated such amounts as may be necessary to carry out the provisions of this Act and to pay the salaries herein provided for and the expenses incurred hereunder.

Section 21. If any clause, sentence, paragraph, provision, part, or section of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, provision, part, or section thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 22. Subsection (2) of Section 3, and subsection (3) of Section 3, and Section 28 of Title 26 of the Code of Alabama are hereby repealed.

Section 23. This Act shall take effect upon its approval by the Governor or its otherwise becoming a law.

Approved June 29, 1943.

Exhibit "B".

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1943-44

6 Div. 234.

ALABAMA STATE FEDERATION OF LABOR, *et al.*

vs.

ROBERT E. McADORY, as Soliciter, etc., *et al.*

Appeal from Jefferson Circuit Court.

GARDNER, *Chief Justice:*

Plaintiffs, under the Declaratory Judgment Statute of this State (Title 7, S. 156-168, Code of 1940), seek to test the constitutional validity of what is commonly referred to as the "Bradford Act," which concerns labor and labor organizations and passed by the Legislature in 1943. Acts 1943, p. 253. All parties upon this appeal argue the case upon the assumption of the regularity of the proceeding in every respect, and the case will be so considered here.

The attack is upon the Act as a whole and upon several of its separate sections. The cause was, by consent, tried before a court of Jefferson County composed of three of its judges, including the presiding judge of that circuit. In the court below the ruling was that the Act as a whole was constitutional, and Section 7, here so vigorously assailed, was likewise held valid. Sections 12 and 17 were held void, and Sections 13 and 14 void in part, but that the validity of these particular features of the Act did not affect the validity of the Act as a whole. The court refrained from passing upon the constitutionality of Sections 15 and 16. But upon this appeal counsel for the respective parties have very ably argued all the questions presented as to each feature of the Act, and seek a conclusion of the whole matter. We acquiesce in this treatment of the appeal and proceed to decision of all questions raised.

At the outset reference may be made, as is often done, to the principles by which courts are guided when it is sought to strike down as violative of the constitution a

legislative act. Uniformly, the courts recognize that this power is a delicate one, and to be used with great caution. It should be borne in mind, also, that legislative power is not derived either from the state or federal constitutions. These instruments are only limitations upon the power. Apart from limitations imposed by these fundamental charters of government, the power of the legislature has no bounds and is as plenary as that of the British Parliament. It follows that, in passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government. All these principles are embraced in the simple statement that it is the recognized duty of the court to sustain the act unless it is clear beyond reasonable doubt that it is violative of the fundamental law. *State ex rel. Wilkinson* v. *Murphy*, 237 Ala. 332, 186 So. 487, 121 A. L. R. 283.

Another principle which is recognized with practical unanimity, and leading to the same end, is that the courts do not hold statutes invalid because they think there are elements therein which are violative of natural justice or in conflict with the court's notions of natural, social, or political rights of the citizen, not guaranteed by the constitution itself. Nor even if the courts think the act is harsh or in some degree unfair, and presents chances for abuse, or is of doubtful propriety. All of these questions of propriety, wisdom, necessity, utility, and expediency are held exclusively for the legislative bodies, and are matters with which the courts have no concern. This principle is embraced within the simple statement that the only question for the court to decide is one of power, not of expediency or wisdom. 11 Am. Jur. p. 799-812; *A. F. of L.* v. *Reilly* (Supreme Court of Colorado), 7 Labor Cases No. 61,761.

The broad doctrine as thus announced is sustained by the weight of authority, both in the Federal and the state courts. For our own State the cases of *City of Ensley* v. *Simpson*, 166 Ala. 366, 52 So. 61, and *State* v. *Ala. Fuel & Iron Co.*, 188 Ala. 487, 66 So. 169, furnish apt illustrations. And as for the Federal courts, reference may be made to *Flint* v. *Stone Tracy Co.*, 220 U. S. 107.

Likewise, another principle should be kept in mind, and that is: where the validity of a statute is assailed and there are two possible interpretations, by one of which the

statute would be unconstitutional and by the other would be valid, the courts should adopt the construction which would uphold it. 11 Am. Jur. p. 725. Or, as otherwise stated, it is the duty of the courts to adopt the construction of a statute to bring it into harmony with the constitution, if its language will permit. This principle has been often recognized by our own Court. *State* v. *Birmingham So. Ry. Co.*, 182 Ala. 475, 62 So. 77; *Whaley* v. *State*, 168 Ala. 152, 52 So. 941; *State ex rel. Collman* v. *Pitts*, 160 Ala. 133, 49 So. 441. It was well stated by the Supreme Court of the United States in *Labor Board* v. *Jones & Laughlin*, 301, U. S. 1, in the following language:

> "The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same."

Bearing in mind these well-recognized principles, we proceed to a consideration of the constitutional questions here presented.

THE ACT AS A WHOLE.

The first constitutional question presented relates to the Act as a whole. It is insisted that its passage violated Section 45 of our Constitution, which provides that every law should contain but one subject, which shall be clearly expressed in its title. This constitutional provision is mandatory upon the courts, and its purpose fully stated in the leading case of *Ballentyne* v. *Wickersham*, 75 Ala. 533. Numerous cases have dealt with this constitutional provision, with full discussion and varied illustrations.

The particular objection here urged so strenuously is that the Act contains more than one subject. Of course, as has been often stated, the purpose of the requirement of a single subject is primarily to prevent "log-rolling" legislation, which would result in the support of doubtful measures induced by adding others upon unrelated subjects. It has been stated, also, that incidentally, the purpose was to avoid ill-considered provisions passing into law while the thought of the Legislature is directed to another subject.

The title to the Act, like every instrument known to the law, is to be construed as a whole. *Gibson* v. *State*, 214 Ala. 38, 106 So. 231; *Davidson* v. *Phelps*, 214 Ala. 236, 107 So. 86; *State ex rel. Ward* v. *Henry*, 224 Ala. 224, 139 So. 278; *Yielding* v. *State ex rel. Wilkinson*, 232 Ala. 292, 167 So. 580. "A statute has but one subject, no matter how many different matters it relates to, if they are all cognate, and but different branches of the same subject." *Yielding* v. *State*, *supra*. And in *State* v. *Henry*, *supra*, speaking to this question the Court said:

> "It is settled under our decisions that however numerous the subject stated in the title, and however numerous the provisions in the body of the act may be, if they can be by fair intendment considered as falling within the subject-matter legislated upon in the act, or necessary as ends and means to the attainment of such subject, the act does not offend our constitutional provision that no law shall embrace more than one subject, which must be expressed in its title."

Counsel in argument ingeniously select different phases of the subject of the Act, insisting that each is separate and distinct. But we cannot agree. As we have previously noted, the title of the Act must be construed as a whole and considered in the light of the subject matter treated in the body of the Act. When so considered, we find in the passage of this Act no infringement of Section 45. The entire Act, as well as the title, indicates that the subject matter concerns labor and the regulation of labor organizations. Clearly enough, the establishment of a Department of Labor and a provision for a Mediation Board come within the influence of this subject. So, likewise, as to the numerous regulations contained in the several provisions of the Act.

Counsel refer to some of the prohibitions embraced in the Act, which, it is urged, do not come within the meaning of the word "regulation"; citing to this effect *Miller* v. *Jones*, 80 Ala. 89. Like argument was advanced in *Davidson* v. *Phelps*, *supra*, where this Court observed, in answer to this insistence, that there are elements of prohibition or restriction inherent in all regulations. Numerous states have like constitutional provisions, among them the State of Illinois. Similar argument was advanced before the Supreme Court of Illinois in *Fenske Bros.* v.

Upholsterers Int. Union, 97 A. L. R. 1318, concerning an act, the title of which was: "An Act relating to disputes concerning terms and conditions of employment." The body of the act prohibited injunctive relief in certain instances which, it was insisted, was in no wise indicated in the title. The Court replied:

> "It is claimed that the title does not indicate anything as to injunctions or their prohibition or that it limits and restricts the jurisdiction of courts of equity, and that these subjects are not germane to the title. We have repeatedly held that, although numerous provisions in an act are not expressed in the general title, the purpose of the constitutional provision is fulfilled when the general subject indicated by the title reasonably covers the provisions of the act, when they are related and have some connection, more or less direct, with the subject of the legislation. Unless the act contains matters having no relation to the title, the constitutional provision is not violated. The provisions of the statute as to injunctions are not inconsistent with, or foreign to, the general subject. The act therefore does not violate constitutional provisions requiring all acts to contain but one subject, which shall be expressed in the title."

But we forego further discussion. Upon careful consideration of argument of counsel for plaintiffs, including a reconsideration of many of the authorities cited (among them, *State* v. *So. Ry. Co.*, 115 Ala. 250, 22 So. 589; *White* v. *Burgin*, 113 Ala. 170, 21 So. 832; *Woolf* v. *Taylor*, 98 Ala. 254, 13 So. 688; *Board of Revenue* v. *State*, 200 Ala. 456, 76 So. 388; *Fidelity & Deposit Co.* v. *Farmers' Hardware Co.*, 223 Ala. 477, 136 So. 824; *State ex rel. Bassett* v. *Nelson*, 210 Ala. 663, 98 So. 715; *Houston County Board of Revenue* v. *Poyner*, 236 Ala. 384, 182 So. 455), we are unable to concur in the view that this Act in any manner violates the provisions of Section 45 of our Constitution.

The Act as a whole is further attacked upon the theory that it is repugnant to the National Labor Relations Act (29 U. S. C. A. §§ 151-166). But we think this question was fully answered by the Wisconsin Court in *Allen-Bradley Local* v. *W. E. R. B.*, 237 Wisc. 164, 295 N. W. 791. (See also full discussion of the subject in *W. L. R. B.* v. *Fred Rueping Leather Co.*, 4 Labor Cases p. 516). On review of the opinion in the *Allen-Bradley* case by the

Supreme Court of the United States the ruling of the Wisconsin Court, to the effect there was no such repugnancy between the state act and that passed by Congress, was fully sustained. *Allen-Bradley Local* v. *Board*, 315 U. S. 740. The Court in unanimous opinion pointed to the well-recognized rule that an intention of Congress to exclude states from exerting their police power must be clearly manifested, and that the courts will not lightly infer that Congress, by the mere passage of a federal act, has impaired the traditional sovereignty of the several states in that regard. The Court concluded by saying:

> "In sum, we cannot say that the mere enactment of the National Labor Relations Act, without more, excluded state regulation of the type which Wisconsin has exercised in the case."

We consider the ruling in that case ample authority in answer to the contention here made.

Argument is advanced also that the Act is invalid because of a capricious discrimination, in that it expressly excludes organizations coming within the influence of the Act of Congress known as the Railway Labor Act. 45 U. S. C. A. §§ 151-188. But a study of that Act, to which we gave attention in *Steele* v. *L. & N. RR. Co.*, — Ala. —, 16 So. (2d) 416, will disclose that it was the intent of Congress, in large part if not entirely, to pre-empt the field covered by the salient features of the Statute.

And in addition to this, the authorities very generally recognize that as to the matter of classification, much is left to sound legislative discretion. As said by the Supreme Court of the United States in *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, legislative authority exerted within its proper field need not embrace all the evils within its reach. To use the language of that opinion: "The Constitution does not forbid 'cautions advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power."

Like thought was also expressed in *People* v. *Zimmerman*, 278 U. S. 63, 62 A. L. R. 785, where the Court observed that the legislature was not bound to extend regulations to all cases which it might possibly reach; that dealing with practical exigencies, the legislature may be guided by experience. True, as there pointed out, such a classification by the law-making body must not be purely arbitrary, oppressive or capricious, but the mere production of

inequality is not enough. The inequality produced in order to encounter the challenge of the Constitution must be actually and palpably unreasonable and arbitrary.

Certainly, the full scope of the National Railway Labor Act suffices to demonstrate that the exclusion of organizations concerning that particular field was not an arbitrary or unfounded discrimination. The two authorities cited should, we think, likewise suffice to answer this contention.

We are thus brought to a consideration of the several sections of the Act here under attack. The validity of the Act and its several provisions rests upon the question of whether or not the State, through its law-making body, was within the proper exercise of its police power.

As we have often observed, the exercise of this power is a governmental function, and is of such a character that it cannot be alienated or surrendered by the legislature. The limits of a state's police power have never been fixed nor its boundaries defined. This for the reason that it is not subject to any definite limitations or boundaries for it represents the state's great reserve power, and at all times is co-extensive with the necessity of the case and the safeguard of public interest. It is a power inherent in the government, and while it may be set aside by the Constitution, yet in order to find that it has been so set aside, the Constitution must plainly so indicate. And the authorities agree it is a peculiar function of the lawmakers to determine when the welfare of the people requires the exercise of the state's police power and what are appropriate measures to that end, subject only to the power of the courts to judge whether any particular law is an invasion of rights secured by the Constitution. *State* v. *Murphy*, 237 Ala. 332, 186 So. 487; *Franklin* v. *State*, 232 Ala. 637, 169 So. 295; *Leary* v. *Adams*, 226 Ala. 472, 147 So. 391; *State* v. *Polakow's Realty Experts*, 243 Ala. 441, 10 So. (2d) 461.

And in *Nebbia* v. *New York*, 291 U. S. 502, reference was made to the inevitable collision between the right of the citizen to exercise exclusive dominion over his property and freely to contract about his affairs, and that of the state to regulate the use of property in the conduct of business. The Court observed:

> "No exercise of the private right can be imagined which will not in some respect, however slight, affect the public, no exercise of the legislative prerogative to regulate the conduct of the citizen which will

not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.

"The Fifth Amendment, in the field of Federal activity, and the Fourteenth as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.

"It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

The opinion contains many illustrations where private rights must yield to the public good in obedience to the mandate of the law-making power.

There are, of course, limitations to the police power, though they have never been drawn with any degree of exactness. As observed in 11 Am. Jur. p. 975, it is much easier to recognize the existence and sources of this power than to mark its boundaries or prescribe limitations to its exercise. As observed by Mr. Justice Holmes in *Noble State Bank* v. *Haskell*, 219 U. S. 104, concerning the police power: "Lines are pricked out by the gradual approach and contact of decisions on the opposing sides." As we observed in *State* v. *Murphy*, *supra*: "Government takes account of the measured step of progress for the application of the police powers to meet new public needs," and instances were noted indicating that what, in other days would not have found favor or countenance with either law-makers or courts as appropriate to or proper manifestations of the police power, is now never questioned or doubted.

The police power is said to extend in a general way to all great public needs. 11 Am. Jur. p. 978. Each state has the power to regulate the relative rights and duties of all persons, individuals, and corporations within its jurisdiction for the public convenience and the public good, the only limitation being that such regulations shall

not prove repugnant to the provisions of the state or national Constitution. 11 Am. Jur. p. 987.

We should stress, also, the fact that a police regulation not operating unreasonably beyond the occasion of its enactment, is not rendered invalid by the fact that it may affect incidentally the exercise of some right guaranteed by the constitution. But the police power may not unreasonably invade private rights guaranteed under the federal or state constitution. And, as we observed in *State* v. *Polakow's Realty Experts*, *supra*, all regulations involve in some degree a limitation upon the exercise of the right regulated. The test is whether the limitation imposed is really by way of regulation only and is one whose purpose and effect go no further than throw reasonable safeguards in the public interest around the exercise of the right. If the limitation is of this character, its imposition is a proper exercise of the police power resident in the legislature and whose exercise is one of the latter's most important functions.

As we have observed, this power must not be exercised arbitrarily or capriciously, and there must be some reasonable relation to the regulation and the ends to be attained. But if upon the matter men may reasonably differ, in view of all the circumstances, the legislative act in the exercise of the police power must be sustained. *Leary* v. *Adams*, *supra*. The cases recognize the rule that the law-making authorities may not, under the guise of police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities. The restriction imposed must bear some substantial relation to the public need or general welfare.

In *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, to which we made reference in *Leary* v. *Adams*, *supra*, concerning a zoning ordinance, the Court made the observation that while the meaning of constitutional guaranties never varies, yet the scope of their application must expand or contract to meet new or different conditions constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise.

Speaking also to a zoning ordinance, the United States Supreme Court in *Zehn* v. *Board of Public Works*, 274 U. S. 325 (also noted in the Leary case, supra), the Court observed in regard to the passage of such zoning ordinance, as follows:

> "The most that can be said is that whether that determination was an unreasonable, arbitrary or

> unequal exercise of power is fairly debatable. In such circumstances, the settled rule of this Court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question."

In *Labor Board* v. *Jones & Laughlin*, *supra*, the Court was dealing with an Act of Congress subjecting the employer to many restraints in regard to his relationship with his employee. The act was vigorously criticized as being one-sided in its application; that it subjects the employer to supervision and restraints and leaves untouched the abuses for which employees may be responsible. The Court, in answering the argument, observed that it was dealing with the power of Congress, not with the particular policy or with the extent to which the policy should go, saying;

> "We have frequently said that legislative authority, exerted within its proper field, need not embrace all evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power."

And we may observe, additional restrictions upon the rights of the employer are to be found in the Fair Labor Standards Act of Congress, recently considered and enforced by this Court in the case of *Cudahy Packing Co.* v. *Bazanos*, — Ala. —, 15 So. (2d) 720. A more recent illustration, from the United States Supreme Court, is to be found in *Medo Photo Supply Co.* v. *N. L. R. B.*, decided April 10, 1944.

With these general observations we may now proceed with their application to the several sections of the Act here assailed.

We may note at the outset that no one giving study to the historical background of the laboring man in his struggle to better his condition in life can for one moment doubt the wisdom and, indeed, the necessity, for organization. Some of these early struggles may be found noted in 31 Am. Jur. p. 836, but need no elaboration here. As observed in Vol. I, Teller's *Labor Disputes and Collective Bargaining*, Sec. 64, the right to form and join labor unions is but the expression of the employee's right to a free and open market, a recognized substantive right.

In *Labor Board* v. *Jones & Laughlin*, *supra*, the Court, after observing that the statute there in question went no further than to safeguard the right of employees to self-organize and to select representatives of their own choosing for collective bargaining or other mutual protection without restraints or coercion by their employer, said:

> "That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer."

We find ourselves in accord with the courts generally that the right of organization is a fundamental one. 31 Am. Jur. p. 851. See also *Pittman* v. *Nix* (Fla.), 11 So. (2d) 791.

And we think it is well-settled that the members of a labor organization—that is, workmen who are not bound by contract for a definite period and have not, by agreement freely made, given up such rights—may, without liability, abandon their employment at any time, either singly or in a body, as a means of compelling or attempting to compel, their employers to accede to demands for better terms and conditions. As the Massachusetts Court observed in *Pickett* v. *Welsh*, 102 Mass. 572, 78 N. E. 753, laborers, in the exercise of the common-law rights of citizens to pursue their callings as in their judgment they see fit, have a right to organize unions and to utilize such organizations by instituting a strike. See also *Bossert* v. *Dhuy*, 221 N. Y. 342. Numerous authorities are found cited in 31 Am. Jur. p. 929.

In *Hardie-Tynes Manufacturing Co.* v. *Cruise*, 189 Ala. 66, 66 So. 657, these inherent rights to which we have referred; that is, the right of the working man to organize for his own protection and betterment and the right to strike, were recognized, wherein the Court, speaking of the authorities upon the subject, said:

> "They seem to be unanimous, also, in holding that employees may rightfully organize themselves into associations for mutual protection and betterment; and that, having thus organized, they may by confederated action withdraw from, or decline to enter, the service of any particular employer."

But our country has grown in population and in industrial importance, and with this growth labor organizations have kept apace. Their power and influence are fully felt and well understood, as well as many conflicts between labor and management in all forms of industry. As said in *Carpenters' & Joiners' Union* v. *Ritter's Cafe*, 315 U. S. 722:

> "The economic contest between employer and employee has never concerned merely the immediate disputants. The clash of such conflicting interests inevitably implicates the well-being of the community. Society has therefore been compelled to throw its weight into the contest. The law has undertaken to balance the effort of the employer to carry on his business free from the interference of others against the effort of labor to further its economic self-interest. And every intervention of government in this struggle has in some respect abridged the freedom of action of one or the other or both. * * *
>
> "The right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces has not previously been doubted. * * *
>
> "But the circumstance that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. * * * We must be mindful that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification

in the interests of the society in which they exist. This is but an instance of the power of the state to set the limits of permissible contest open to industrial combatants."

In some of the states statutes have been passed modeled after the National Labor Relations Act, and providing a complete supervision of labor relations for employers in intrastate enterprises. Illustrative is the Colorado Act of 1943. Session Laws of Colorado 1943, p. 392-418. Somewhat similar is the Wisconsin Act (Chapter 57, Laws of 1939), treated in *Christoffel v. W. E. R. B.*, 10 N. W. (2d) 197; and *Hotel, etc., Alliance* v. *W. E. R. B.*, 236 Wisc. 329. This latter case was in part reviewed by the Supreme Court of the United States in *Hotel, etc., Alliance* v. *W. E. R. B.*, 315 U. S. 437, and as thus reviewed was affirmed:

The power of a state to pass such regulatory measures is based upon the police power, and this has been generally recognized. In the very recent case of *Ex parte R. J. Thomas*, 7 Labor Cases No. 61, 831, the Texas Supreme Court observed: "The right of the state under its inherent police power to regulate labor unions in order to protect the public welfare appears to be almost beyond questions."

The Colorado Act was reviewed by the Supreme Court of Colorado in *A. F. of L.* v. *Reilly*, 7 Labor Cases No. 61, 761. And in *Thornhill* v. *Alabama*, 310 U. S. 88, the Court observed: "The merest glance at state and federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern."

Indeed, as we read the briefs, counsel for plaintiffs with commendable candor concede that the subject is one which may be embraced within the exercise of the police power of the State. The argument, as we understand it, is that the various provisions of this Act to which they have raised objections, do not constitute reasonable regulations, are unreasonable, arbitrary and capricious, or violative of fundamental rights secured under both the State and Federal Constitutions.

SECTION 7.

This brings us to a consideration of the objections to Section 7 of the Act, first treated by counsel in brief. This provision of the Act requires that every labor organization functioning in Alabama, or hereafter desiring to

function in Alabama, shall, before doing so, file a copy of its constitution and by-laws, and a copy of the constitution and by-laws of the national or international union, if any, to which such organization belongs, with the Department of Labor, omitting, however, any ritual relating solely to the initiation or reception of members. Amendments to such constitutions and by-laws are likewise required to be filed with the Department of Labor. All such organizations functioning in this State and having 25 or more members in any calendar year shall, on a fixed date each year, file with every member of their respective labor organizations and with the Director of the Department of Labor, a report in writing showing the following facts, as of the close of business on the 31st day of December next preceding the date of filing:

(1) the name of the labor organization; (2) the location of its principal office in Alabama; (3) the name of the president, secretary, treasurer, and other officers and business agents, together with their salaries, wages, bonuses, and other remuneration paid each, and the post office address of each; (4) the date of regular election of officers; (5) the number of its paid-up members; (6) complete financial statement of all fees, dues, fines, or assessments levied or received, together with an itemized list of all disbursements, the name of recipients and the purpose therefor, covering the preceding twelve months; (7) a complete statement of all property owned by the organization, including monies on hand or credited to the organization.

The Director of Labor shall have printed and make available public forms for the making of such report, and at the time of the filing of such report, it shall be the duty of the organization to pay the Director of Labor an annual fee therefor in the sum of $2.00. The Director is to file and index the reports, and the section provides that the records provided for shall be made available by the Director of Labor in his office to the Governor of Alabama for examination. It is made unlawful for any fiscal or other officer or agent of any labor organization to collect or accept payment of any dues, fees, assessments, fines, or any other monies from any member while such labor organization is in default with respect to filing the annual report required by this section.

In Section 18 of the Act the violation by any labor organization of any of it provisions subjects them to a civil penalty of a sum not exceeding $1000.00 for each such

violation. And by the same section the violation of the provisions of Section 7, as to the officers or agents collecting dues and other monies while such organization is in default with respect to filing the annual report, is declared to be a misdemeanor and punishable by a fine of not exceeding $500.00 or by imprisonment at hard labor for not exceeding twelve months, or both.

In arguing against the validity of this section counsel lay much stress upon the constitutional right of free speech and of assembly, and we are cited, among other authorities, to *DeJones* v. *Oregon*, 299 U. S. 353, where the Court observed that the right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental. And counsel would argue that, because it is a part of the purpose of labor organizations to peaceably assemble and discuss their affairs, the State has no right of regulation of the character here in question because of the fact these fundamental rights are involved and the restraints of Section 7 are violative thereof. And in reply brief the argument is further advanced that these provisions must be held unreasonable and invalid if in fact there is any restraint to the liberty of speech involved. We are cited to both the Alabama and Federal Constitutions guaranteeing the freedom of assembly and speech, and to *Bridges* v. *California*, 314 U. S. 252; *Murdock* v. *Penn*, 87 L. Ed. 1292, 319 U. S. 105; and other authorities of like nature.

Counsel do not contend that labor organizations are immune from regulation, but assert the contrary. They say, however, regulation is one thing, but restraint of liberty of speech another. But we think this argument overlooks the full power of the Legislature in the exercise of the police power of the State, and it overlooks also the full meaning of the word "functioning," as employed in Section 7. As defined in the Act, a labor organization is one which has within its membership employees working in the State of Alabama, organized for the purpose of dealing with employer or employers concerning the hours of employment, rates of pay, or the tenure or other terms and conditions of employment. And the courts, of course, take judicial knowledge of the fact—and the Act so discloses—that there are assessments and fines and dues, monies collected and disbursed, officers elected, and agents employed. Such organizations may sue and be sued and its properties subjected to the satisfaction of any judgment rendered against it. Title 7, Secs. 142-5, Code of 1940. The pur-

pose and scope of the activities of labor organizations is fully discussed in *U. M. W.* v. *Coronado Co.*, 259 U. S. 344. And indeed, these are matters with which the courts are now entirely familiar.

"Function," as used in this Act, simply means a labor organization, whether incorporated or not, engaged in business in this state, and in the character of business thus indicated, for the promotion of the interests of its members. True, as a part of its functioning, and a part only, the assemblage of its members for discussion is had, but this is merely incidental. As the authorities cited indicate, every enactment for public need necessarily results in some restraint of individual liberty.

But as observed by this Court in *Carter* v. *Knapp Motor Co.*, 243 Ala. 600, 11 So. (2d) 383, reiterated in *Lash* v. *State*, 244 Ala. 48, 14 So. (2d) 229, taking the language from the Supreme Court of the United States in *Jones* v. *City of Opelika*, 316 U. S. 584, and *Carpenters' & Joiners' Union* v. *Ritter's Cafe*, 315 U. S. 722:

> "Courts are competent to adjudge the acts men do under the color of a constitutional right, such as that of freedom of speech, and to determine whether the claimed right is limited by other recognized powers equally precious to mankind. * * * Whenever state action is challenged as a denial of 'Liberty,' the question always is whether the state has violated the 'essential attributes of that liberty.'"

Numerous instances might be cited to indicate where private rights must yield to public need. The establishment of the Securities Commission of this State is one example; and the requirement of a certificate to conduct the business of real estate brokers, treated in *State* v. *Polakow's Real Estate Experts*, *supra*, is another.

As observed by the Supreme Court of Texas in *Ex parte R. J. Thomas*, *supra*, the State, under its police power, may enact laws which interfere indirectly and to a limited extent with the right of speech or the liberty of the people where they are reasonably necessary for the protection of the general public. And as observed in *Carpenters' & Joiners' Union* v. *Ritter's Cafe*, *supra*:

> "Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the state to impose reasonable regulations for the protection of the community as a whole, the duty

of this court is plain. Whenever state action is challenged as a denial of 'liberty,' the question always is whether the state has violated 'the essential attributes of that liberty.' * * * While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause, that clause postulates the authority of the states to translate into law local policies to promote the health, safety, morale and general welfare of its people. The limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise."

The argument advanced here was also advanced and answered by the Colorado Court in *A. F. of L.* v. *Reilly*, *supra*, and to like effect. See also *Christoffel* v. *W. E. R. B.*, *supra*. And in *Whitney* v. *California*, 274 U. S. 357, it was pointed out that the freedom of speech guaranteed by the Constitution is not such an absolute right as to deprive legislative bodies of their proper exercise of the police power of the state.

If we follow the argument of counsel for plaintiff to its ultimate conclusion, it is difficult to see where any effective legislation could be had concerning regulations of organizations of this character. We think the authorities which we have herein cited clearly demonstrate that they are subject to the police power of the state, and that the contention as to the violation of the constitutional provisions of free speech and assembly invalidates any of the provisions of the Act, is untenable.

The argument is further advanced that the Act requires the issuance of a license to a labor organization as a condition precedent to functioning in the State; and much stress is laid upon *International Textbook Co.* v. *Pigg*, 217 U. S. 91. That authority rested solely upon the right of a state to regulate interstate commerce. The opinion concludes with the statement: "The state cannot thus burden interstate commerce." It is, in our opinion, inapplicable here. In the first place, there is no license required. The fee of $2.00 is merely a regulatory and incidental matter, to be collected for the purpose of defraying the expense incidental to the furnishing of the forms and reports, and to the filing thereof with the Director.

The question resolves itself after all as to whether or not the filing of these reports can be held to be a reasonable regulation under the police power of the

State. The director of Labor has construed the Act to the effect that these reports are not for public consumption. We think a reading of the Act clearly indicates that they are to be exhibited to the Governor only, and the Director is justified in this interpretation of the Act. Clearly enough, if we are to have a Department of Labor to deal with labor organizations, and to attempt to settle disputes, and to bring about industrial peace in this State, it is a reasonable regulation that the Director be informed of the character of the organization, its varying rules and regulations.

The constitution, rules, and by-laws of a labor organization are the source of its authority. They constitute not only the contract between the labor union and the members, but also the contract between the members and other members of the union. As said in Vol. I, Sec. 62, Teller on *Labor Disputes and Collective Bargaining*: "Questions relating to the property, funds, and internal administration of labor unions raise no problem peculiar to such unions." And in the succeeding section of this work the author cites instances in which it became necessary to carefully examine into the source of the particular organization involved, so as to determine whether or not it was in fact a labor union or merely an organization seeking, for its own advantage, to assume the cloak of such a union.

A rather extreme example of the constitutional validity of requirements of this character is to be found in the statute of New York, which required a copy of the constitution, by-laws, rules, regulations, oath of membership and the roster of its membership, of a secret organization, to be filed with the Secretary of State, with exemption of numerous other secret organizations from the influence of the act. Upon the question of classification, the Court observed, among other things, that a lack of abstract symmetry does not matter and that the state may classify with reference to the evil to be prevented. The holding was that the requirements were valid, and the inequality produced was not actually and palpably unreasonable and arbitrary. See *People* v. *Zimmerman*, 278 U. S. 63, 62 A. L. R. 785, affirming the New York Court of Appeals in *People* v. *Zimmerman*, 43 A. L. R. 909.

And as to the requirement for a financial statement, we think it clear enough these provisions may be fully justified as a regulation for the benefit of the members of the organization. The Texas Court in *Ex parte R. J. Thomas*, 174 S. W. (2d) 958, referred to the large membership in labor unions and the large sums of money contributed in the

form of dues and the manner in which these unions function for the protection of their members, all of which greatly affect the economic life of the individual worker. The opinion proceeds:

> "Because of the large membership in a single union, and the limited opportunity of the individual member to personally familiarize himself with the manner in which his union is operated makes it impossible for the individual worker to protect himself in his own right against its mismanagement. These circumstances present a field for legislation by the State for the protection of the rights of the laborer as well as the general public."

Nor can we agree that any claimed right of privacy in any manner affects the validity of Section 7. It has in it no elements of a "fishing expedition" as spoken of in *Federal Trade Comm.* v. *American Tobacco Co.*, 264 U. S. 298, or in *Jones* v. *Securities & Exchange Comm.*, 298 U. S. 1. And, indeed, under the proper interpretation of the Act, as given by the Director of Labor, these reports, as we have above indicated, are not for public consumption. But even beyond all this, any such claimed right of privacy is subject, as pointed out in *Meyer* v. *Nebraska*, 262 U. S. 390, "to such restraints as are necessary to the common welfare."

The provisions of Section 7 have the appearance of having largely been taken from Section 5 of the Labor Relations Act of the State of Kansas (1943), as found reported in 2A Labor Law Service No. 41,033. The Kansas Act, however, in Section 6 goes one step further and makes specific provision to the effect that the records filed with the Secretary of State shall be available to all persons. We do not find where the provisions of this Kansas Act have been tested in the courts. It is given comment by the author in an article to be found in the January, 1944, issue of the *Iowa Law Review*, with particular reference to the requirement of financial statements, which the author insists is to be sustained, both upon the ground of protection of the members of the labor organization and upon the further ground that the financial affairs of unions, particularly economically powerful unions, are matters of public concern.

But the Legislature has seen fit to make these requirements, and we are not able to say that they are arbitrary

or capricious. The most that could be said for plaintiffs is that the question is a debatable one, and as we have pointed out, when such is the case, it is the duty of the court to sustain the legislative act.

We have already answered in the negative the contention that the Act conflicts with the National Labor Relations Act, and, as we have said, it imposes no burden on interstate commerce. We have also stated our view that no license is here required, and that the two dollar fee provided for in this section is but an incidental charge. Likewise, we have adverted to the case of *International Textbook Co.* v. *Pigg, supra*, as indicating its inapplicability to the instant case. After all, and reduced to its last analysis, the question is whether or not the Legislature, in the provisions of Section 7, overstepped the bounds of police power of the State. If it be conceded there is debatable ground—and we think that is clear—it is our duty to declare in favor of the validity of this section. Such is our conclusion.

We may add the record discloses a number of labor unions (192) promptly complied with the provisions of Section 7. And it also may be noted that Congress in Section 112 of the Revenue Act of 1943 inserted a provision requiring labor organizations, though exempt from income tax, to file an annual report with the Commissioner of Internal Revenue disclosing "the items of gross income, receipts and disbursements, and such other information, for the purpose of carrying out the provisions of this Chapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe." And though not here binding, it is proper also to direct attention to the fact that the three judge ruling of the court below in the instant case, declaring Section 7 valid, was likewise the ruling of the three judge federal court in the case of *Borden* v. *Sparks, et al.* (decided February 10, 1944), 8 Labor Cases No. 62,027. These rulings are due consideration in weighing the reasonableness of the regulations and as to whether or not a debatable question as to the exercise of the police power was presented.

SECTION 12.

The next question involved concerns the validity of that part of Section 12 of this Act making it unlawful "in and about the business of an employer for any employee to refuse to handle, install, use, or work on any particular

materials, equipment or supplies because not produced, processed, or delivered by members of a labor organization."

It seems to be established by the decided weight of authority (*Coppage* v. *Kansas*, 236 U. S. 1; L. R. A. (1915 C) p. 960; *Parkinson Co.* v. *Bldg. Trades Council* (Cal.), 21 L. R. A. (N. S.) 550; *Cohn & Roth Elec. Co.* v. *Bricklayers Local* (Conn.), 6 A. L. R. 887; *Bossart* v. *Dhuv*, 221 N. Y. 342) that a rule of a labor union forbidding its members to work with non-union men or members of a rival organization is valid. And likewise as to a rule of a labor organization refusing to allow members to work with non-union material. *Paine Lumber Co.* v. *Neal*, 244 U. S. 459; *State* v. *Van Pelt*, 136 N. C. 633; *Auburn Draying Co.* v. *Wardell*, 227 N. Y. 1; annotations, 6 A. L. R. p. 958, 116 A. L. R. 513, 52 A. L. R. 1145, and 54 A. L. R. 806. See also to like effect, 63 C. J. P. 655; Restatement of the Law of Torts, §§ 802 et seq.

Though these cases may not have involved legislative acts, yet the principles that they recognize must be taken into consideration in determining the validity of this particular section. Counsel for defendants lay some stress upon *A. F. of L.* v. *Reilly*, the Colorado case cited above, defining a secondary boycott. But there is little similarity between the Colorado statute and Section 12 of the Bradford Act. The Court there was dealing with Section 2 (11) of the Colorado statute, supra, defining secondary boycott. That provision of the Colorado Act here pertinent reads as follows:

> "The term 'secondary boycott' shall include causing or threatening to cause, and combining or conspiring to cause or threaten to cause, injury to one not a party to the particular labor dispute, to aid which such boycott is initiated or continued, whether by (a) withholding patronage, labor, or other beneficial intercourse; (b) picketing; (c) refusing to handle, install, use or work on particular materials, equipment or supplies; or (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another or to compel the party with whom such labor dispute exists to comply with any particular demands."

It is this provision which was upheld by the Colorado Court.

Section 12, however, makes it a crime—a misdemeanor—with permissible heavy penalty, for a single workman to refuse to handle any material because not produced, processed, or delivered by members of a labor organization. The question of boycotts is fully treated in 31 Am. Jur. p. 953 et seq., and in an extensive note to *Auburn Draying Co.* v. *Wardell*, 6 A. L. R. 901. Many of these authorities have been by us given consideration, but not in any of them do we find a provision of this drastic nature. Indeed, as we read the authorities, the provisions of Section 12 do not establish a secondary boycott as defined in any of the cited cases. See *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443. In the Wardell case, the New York Court makes reference to the individual freedom one may exercise, though indirectly it may affect another, saying:

> "The individual may do, and does, many acts which in their effect are or may be coercive as to another. The right to do those acts inheres in the natural freedom and the civil rights which are his."

We have shown that the authorities recognize that the workman has a right to refuse to work with non-union material. Yet under this section he would be compelled to work, or else be guilty of a criminal offense. Of course, every man may engage to work for or deal with, or refuse to work for or deal with, any man or class of men as he sees fit—whatever his motive or the resulting injury—without being held in any way accountable therefor. 31 Am. Jur. p. 842. Some of the authorities have said that members of labor unions consider the material processed or delivered by non-union workers threatens the interest of the union, and that in refusing to work on such material the union is only refusing to aid in its own destruction. 31 Am. Jur. p. 942.

This Section 12 makes no reference to a conspiracy or to the confederated action of two or more persons. Nor does it have reference to any intention of injury to another. The individual workman may be acting in entire good faith and in obedience to a rule of his local union, or he may be acting in entire good faith in what he considers to the best interests of the union to which he belongs, and to labor unions in general. His conduct may be in the nature of an individual protest against the use by his employer of material not processed by members of a labor union. But all of this is entirely lawful. He is acting within his rights.

but without coercion and without confederation, and without malicious intent.

The authorities are to the effect that a labor union may, so long as its action is not directed against a particular individual, refuse to permit its members to work on material produced or transported by non-union labor, and that a strike called to compel the handling of union material only is not unlawful. 31 Am. Jur. p. 942. Of course, the refusal of the individual worker may culminate in a labor dispute, but if so, his action would be entirely lawful. The effect would be, as is well argued, to make it a crime under such circumstances to engage in a labor dispute concerning work with non-union material. A workman, even though acting in a proper manner, and refusing to work on non-union material but offering to submit the matter to a board of mediation, would yet be guilty of an offense.

It is to be noted that this section does not deal with the right to strike for non-union material. It deals solely with individual protest of the individual workman. We are inclined to the view that it is simply a refusal to perform a contract for personal service, which is under this section made a crime, and that it infringes closely upon the Thirteenth Amendment to the Federal Constitution prohibiting involuntary servitude of any character. As said in *Bailey* v. *State*, 219 U. S. 219: "There is no more important concern than to safeguard the freedom of labor upon which alone can enduring prosperity be based." In the same case the Court also observed:

> "In this class of cases where the entire subject matter of the legislation is otherwise within state control, the question has been whether the prescribed rule of evidence interferes with the guaranteed equality before the law or violates those fundamental rights and immutable principles of justice which are embraced within the conception of due process of law."

And we may note the very recent case of the United States Supreme Court, re-affirming the Bailey case and others of like character, in *Pollack* v. *Williams* (MS), decided April 10, 1944. It is suggested that Section 12, in its effect, merely outlaws a "sit-down" strike, condemned by the statutes of several states (Vol. I, Sec. 106, Teller on *Labor Disputes and Collective Bargaining*), and by the cases of *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, and *N. L. R. B.* v. *Fansteel Corp.*, 306 U. S. 240. But we

think it requires no discussion to disclose that the provisions of Section 12 in no manner are analogous to a "sit-down" strike as defined in any of the statutes or cited decisions.

And as observed by the Supreme Court of the United States in *Labor Board* v. *Jones & Laughlin*, *supra*, the single employee is helpless in dealing with his employer, dependent as in most instances he is upon the daily wage for maintenance of himself and family and unable to safely leave his employment, however aggrieved he as an individual may feel. To all practical purposes, under the terms of this section the employee, though in entire good faith and convinced that material produced by non-union labor is destruction of his interest, yet in order to hold his job and continue to work, must suppress any expression of such conviction.

The Colorado Court in *A. F. of L.* v. *Reilly*, *supra*, declared Section 20 of the Colorado Act as violative of the due process clause of the Fourteenth Amendment. This section required that all labor unions be incorporated. The Court held that this was an unwarranted interference with the union's internal organization affairs and the imposition of unwarranted burdens upon the exercise of the basic rights guaranteed in the Bill of Rights. The Court in that opinion observed: "Said section is an imposition of a previous general restraint upon the exercise of basic civil rights, and the finding and declaration herein, as previously stated, is founded, and the conclusion of the Court reached, upon that ground."

As to whether or not the provisions of Section 12 contravene the Thirteenth Amendment to the Federal Constitution is a question we may leave to one side and undetermined. Like the Colorado Court, we think the decision may well be rested upon the ground that it violates fundamental and basic civil rights as guaranteed under the Fourteenth Amendment.

SECTION 13.

We are persuaded, also, that that part of Section 13 of the Act, making it unlawful to strike except when it is authorized by the vote of the majority of the regular employees working in the business, plant, or in such unit thereof, expressed by a secret ballot, cannot be sustained. As we have previously noted, each individual employee has a right to strike for a legally justifiable purpose, and such

a right, of course, rests upon a minority as well as upon a majority. *Hardie-Tynes Manufacturing Co.* v. *Cruise, supra; Welch* v. *State*, 28 Ala. App. 273, 183 So. 879 (Cert. den., 236 Ala. 577, 183 So. 886).

This section makes no distinction in what the authorities refer to as a lawful or unlawful strike. It must be construed, therefore, as having application to a perfectly lawful strike for a lawful purpose conducted in a lawful manner. The question, therefore, is whether or not a small group of individuals, for a legally justifiable reason, may be denied the right to strike unless it is by secret ballot, authorized by a majority of the regular employees working in the plant or in the business.

Of course, as we have observed, the right to strike or to refrain from work is a personal, individual right. Reduced to its last analysis, therefore, the question arises as to the reasonableness of a regulation making the right to strike dependent upon the will of others who may not in any manner be connected with, or interested in, the welfare of the minority group. Indeed, these other employees may not belong to or believe in a labor organization. This Act is wholly different from the Wisconsin Act dealt with in *Hotel, etc., Employees Alliance* v. *W. E. R. B.*, 236 Wisc. 329. In the act there considered the principle of collective bargaining, featured after that of the National Labor Relations Act, was provided, and the question of a strike was left to the determination of the majority of a collective bargaining unit. The Court there observed: "The principle upon which authorized collective bargaining depends is that the rule of the majority within an appropriate collective bargaining unit shall bind the minority." Reference was made to this principle by this Court in *Steele* v. *L. & N. RR.*, — Ala. —, 16 So. (2d) 416, and numerous instances have been noted where the courts have held that in proper cases the minority must yield to the rule of the majority in such bargaining units.

The Wisconsin Court recognized this principle and gave it effect in upholding the Wisconsin statute, but we have no such provision in the Act here under consideration. The denial of the right to strike is made to rest, not upon the rule of the majority of any bargaining unit or in any craft to which the workmen belong, but upon the whim or caprice of others who may be employed in the business, plant, or unit thereof, whoever they may be and whatever views they may entertain as to labor or labor unions. The unit referred to is, of course, the unit of the business or plant.

presumably having reference to those larger corporations whose business activities call for separate locations or units.

The principle recognized by the Oregon Court in *A. F. of L.* v. *Bain*, 130 A. L. R. 1278, holding invalid a statute which prohibited picketing by a minority of the employees of a particular employer as an incident to a labor dispute, has application here. There, of course, was involved the constitutional right of free speech, and the Court observed: "We see no escape from the conclusion that the denial of such a right to the members of a minority is no less an unconstitutional abridgment of the right simply because it is saved to the majority." See also *A. F. of L.* v. *Swing*, 312 U. S. 321, and *Goolsby* v. *State*, 213 Ala. 351, 104 So. 901. Of course, a strike is one manner in which labor communicates its position on certain questions to the outside world. The right to strike depends largely upon the purpose for which the strike is called and the manner in which it is conducted.

True, in *Dorchy* v. *Kansas*, 272 U. S. 306, is the statement: "Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike." This, read in connection with the entire opinion, is to be interpreted as meaning that a strike for an unlawful purpose might be forbidden, or that in fact strikes might be by the states regulated under the police power without the violation of the Fourteenth Amendment. We cannot read that case, however, to the end that the state may constitutionally forbid a lawful strike called for a lawful purpose. Vol. I, Secs. 26 and 85, Teller on *Labor Disputes and Collective Bargaining*.

Nor do we interpret *Pittsburgh Plate Glass Co.* v. *N. L. R. B.*, 313 U. S. 146, or *Carpenters' & Joiners' Union* v. *Ritter's Cafe*, *supra*, as stating any principle in conflict with this conclusion. Indeed, as we interpret this section, the restrictions thus placed on the right to strike may in practical effect amount to a prohibition which, as to a lawful strike, is beyond legislative authority.

And in considering this section, it should be kept in mind, as stated by the Massachusetts Court in *Pickett* v. *Walsh*, 78 N. E. 753: "The right of laborers to organize unions and to utilize organizations by instituting a strike is in exercise of the common law right of every citizen to pursue his calling, whether of labor or business, as he in his judgment thinks fit."

But we forego further discussion, as much of the reason-

ing applicable to Section 12 is likewise to be applied to Section 13. We are well convinced that a prohibition to strike placed upon a minority group, unless sanctioned by secret ballot of others who are without interest in their welfare, is an unreasonable and arbitrary restraint, and must be stricken down.

SECTION 15.

In Section 15 it is made unlawful for any labor organization, officer, or agent, or any other person, to collect, receive, or demand directly or indirectly from any person any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege of work. Excluded from the provisions of this section are initiation fees or dues. In the declaration of policy as found in this Act is the following language: "The right to live involves the right to work. The public and working men and women must be protected. The activities of labor organizations affect the social and economic conditions of the State and the welfare of its citizens. It is declared to be the policy of this State, in the exercise of the police power and in the protection of the public interest, to promote voluntary and peaceful settlement and adjustment of labor disputes and to regulate the activities and affairs of labor organizations, their officers, agents, and other representatives in the manner and to the extent hereinafter provided."

In other parts of the body of the Act are declarations to the effect that every person shall be free to join or refrain from joining any labor organization except as provided otherwise in Section 16 of the Act, and nothing in the Act shall impede or diminish any right to strike or the right of individuals to work. It is further declared that nothing in the Act shall be so construed as to invade unlawfully the right of freedom of speech.

And Section 15 concerns the declared policy of the right to work, a declaration which in fact needed no reiteration, as it is a right universally recognized. One's employment, trade, or calling, is a property right, and the wrongful interference therewith is an actionable wrong. *U. S. Fidelity & Guaranty Co.* v. *Millonas*, 206 Ala. 147, 89 So. 732, 29 A. L. R. 520. In *Carter* v. *Knapp Motor Co.*, *supra*, the holding was that the right to conduct one's business without the wrongful interference of others is a valuable property right which will be protected if necessary by injunctive process, and that the enjoyment of

good name and good will of a business is likewise a valuable property right, subject to like protection.

In *Lash* v. *State*, 244 Ala. 48, 14 So. (2d) 229, is the observation: "Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor." The argument against this section of the Act is in fact rested in large part, if not wholly, upon the contention that it is too indefinite and uncertain, and numerous authorities are cited to the effect that criminal statutes must be explicit. *Savage* v. *Wallace*, 165 Ala. 572, 51 So. 605; *State* v. *Skinner*, 20 Ala. App. 204, 101 So. 327; *Standard Oil* v. *State*, 178 Ala. 400, 59 So. 667; *Woco Pep Co.* v. *City of Montgomery*, 213 Ala. 452, 105 So. 214; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81; *Small Co.* v. *American Sugar Refining Co.*, 267 U. S. 233; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210. These authorities cited by counsel have been considered, and we think are readily distinguishable. The language is plain—it simply prohibits a charge upon the right of one to work. Illustrations tending to support this view may be found in *Whitney* v. *California*, 274 U. S. 357. Whether or not certain practices to which counsel refer are to be construed as coming within the provisions of the Act are questions which will arise when the proper case is presented.

Expressly excluded are dues and assessments. These are, therefore, not involved. This section was directed towards the practice whereby a person seeking a job is required to obtain a permit or a certificate by the payment of a sum of money to some organization before being permitted to exercise his right to work. The Legislature, in the exercise of its police power, has seen fit to put its stamp of disapproval upon any such practice, and Section 15 was merely to put in force the declared policy of the Act that the right to live involves the right to work. We are persuaded without further discussion that the language here is sufficiently explicit and cannot be condemned for indefiniteness. That it is a proper exercise of the police power appears not to be seriously questioned.

SECTION 16.

In Section 16 the Legislature has seen fit to make it unlawful for any executive, administrative, professional, or supervisory employee to be a member of a labor organ-

ization which permits such membership. We have fully recognized, and the point was emphasized in the recent case of *Steele* v. *L. & N. RR.*, *supra*, the right of these voluntary organizations to determine for themselves who shall become members. The question is there fully discussed, with citation of supporting authorities. But that conclusion by no means affects the exercise of the broad police power of the State. The question simply is as to whether or not this regulation is within the bounds of reason or is it arbitrary and capricious? As we have observed, if the question is one that is debatable, it is the duty of the Court to sustain the Act. . Clearly enough, it is debatable. Indeed, the actions of unions themselves disclose a reasonable ground for this regulation, for the record shows that in a number of unions those occupying supervisory positions here referred to in Section 16 are refused membership in the union. This is rested upon the theory that those unions consider that the superintendent, as to the workmen under him, sits across the table with management, and that his interests lie more with the employer than with the employee.

We might point to the charges contained in *Local Union 57* v. *Boyd*, — Ala. —; 16 So. (2d) 705, as furnishing some illustration of the reasonableness of this regulation. The bill there was rested upon the theory that the complainant suffered expulsion from the union because, in the exercise of his duties, some of the employees who were members of the same union as complainant, the superintendent, lost their places. In Vol. II, Teller on *Labor Disputes and Collective Bargaining*, p. 933, the author points out many decisions of the National Labor Relations Board adopting the policy excluding supervisory employees from the bargaining unit where either the competing labor unions desires their exclusion. And all of this is based upon the reasoning that the supervisory employee is connected with management.

Of course, all of these divisions of opinion concerning the proper place for the supervisory employee revolve around the question of a conflict of interest and as to whether or not one can serve two masters. The proper place for such supervisory employee has often been considered by the National Labor Relations Board, with the result they were held to be more correctly designated with management. Leading to like result is the case of *J. L. Heinz Co.* v. *National Labor Relations Board*, 311 U. S.

514, and *International Association Machinists* v. *National Labor Relations Board*, 311 U. S. 72.

We are persuaded without further discussion that this regulation has a reasonable basis upon which to rest, and that the objections to its validity are not well taken.

The section protects existing insurance contract rights; that is, rights to insurance benefits secured by reason of membership in labor organizations. By reason of this stipulation it may be that as a practical result the restriction imposed will be of a limited nature. As we construe it, it must mean that as to a member of a labor union who had, by reason of such membership or by reason of contract, secured certain insurance benefits which are to be lost upon his separation from the union, advancement to the position of superintendent would not be prohibited. This for the reason that his union connection is essential to the preservation of his benefit contract. Anyone, however, hereafter becoming a member of the union, and by reason of such membership, or by contract, becomes entitled to certain benefits, must yield those benefits by accepting a supervisory position. This for the reason the provisions of Section 16 are before him in the eyes of the law, and he takes his benefits subject thereto. But this relates only to the practical operation of Section 16. As thus construed, we are persuaded that it is a valid provision.

SECTION 17.

As to Section 17, making it unlawful for any labor organization or any organization of employers of labor to make financial contributions to any political party or to any person who may be a candidate for any political or party office, and the like, it does not seem to be seriously controverted that so much of said section placing such prohibition upon an organization of employers of labor is invalid under Section 45 of our Constitution because bearing no relation to the subject of the Act. The insistence on the part of defendants is that the separability clause of the Act would justify the Court in eliminating that feature which prohibits an organization of employers of labor from making such contributions, and leaving the prohibition against organizations of employees in force and unimpaired. There are numerous cases upon this question of separability, among them being *Gibson* v. *State*, 214 Ala. 38, 106 So. 231, to which counsel for defendants

refer. Some reference is made to *Smith* v. *Court of County Commissioners*, 117 Ala. 196, 23 So. 141, to the effect that the constitutional provisions will only be passed upon when called in question by the party interested.

But this proceeding is under the Declaratory Judgment Act, and all parties to the suit are interested and are desirous that the rights under the Act might be fully determined and their future course thus chartered. We think we should proceed upon that basis.

We recognize the force of the argument that the separability clause should be given effect, where possible, to save the Act. But the principle is well understood that a clause of this character may not be invoked to save the Act when in contravention of the obvious legislative intent. *State ex rel. Crumpton* v. *Montgomery*, 177 Ala. 212, 59 So. 294; *State ex rel. Lister* v. *Hawkins*, 229 Ala. 144, 155 So. 692; *Wilkinson* v. *Stiles*, 200 Ala. 279, 76 So. 45; *Williams* v. *Standard Oil Co.*, 278 U. S. 235. No one can read the provisions of Section 17 without at once coming to the definite conclusion that the Legislature intended to put organizations of employees and employers on the same basis, and that evidently the law-makers thought it would be unjust to prohibit contributions for political campaigns to one and permit them to the other. The two classes are intertwined and so correlated as to our minds disclose the legislative intent of equality in application. We are persuaded, therefore, that the exclusion of the organizations of employers from the provision of this section must, in order to give effect to the legislative intent, likewise exclude the employees. Such being the case, the whole of Section 17 goes down.

There are a number of sections in the Act the validity of which are in no manner here brought into question. It is clear enough, therefore, that the invalidity of the several sections herein indicated in no manner affects the Act as a whole. And we have already observed that the Act as a whole is entirely valid.

The result of our finding, therefore, is that the Act as a whole is to be sustained, including Sections 7, 15, and 16, under attack in this proceeding; that Section 12, and so much of Section 13 as prevents a strike except by a vote of a majority of the employees in a business, plant, or in a unit of such plant expressed in a secret written ballot, is declared ineffective, together with the provisions of Section 14 intended to make more effective that part of Section 13

as to unlawful strikes; and all of Section 17, are declared to be invalid.

The ruling here as to the invalidity of Section 12 and the portion of Sections 13 and 14 as above indicated, is in accord with the holding of the Court below; and the cross-assignments of error as to these rulings are without merit. Like observation is applicable to Section 17, the ruling here being in accordance with the ruling of the court below. There was no holding in the court below as to the constitutionality of Sections 15 and 16, which are held to be valid.

It results, therefore, that the cross-assignments of error are not well taken, and that the judgment appealed from is due to be affirmed.

Affirmed.

FOSTER, LIVINGSTON and STAKELY, JJ., concur.
THOMAS and BROWN, JJ., dissent.

THOMAS, JUSTICE (*Dissenting*)

I have only to say that in my opinion the Bradford Act (Acts of Alabama 1943, p. 253) is contrary to organic law, state and federal.

The act offends the rule of duplicity clearly stated in Section 45 of the Constitution of Alabama. Many authorities cited in Code 1940, Art. IV, § 45, p. 98, Vol. 1 uphold this position. See *Ballentyne* v. *Wickersham*, 75 Ala. 533; *Woolf* v. *Taylor*, 98 Ala. 254, 17 So. 688; *White* v. *Burgin*, 113 Ala. 170, 21 So. 832; *State* v. *Southern Ry. Co.*, 115 Ala. 250, 22 So. 589; *Board of Rev. and Road Com'rs of Mobile County* v. *State ex rel. Roberts*, 200 Ala. 456, 73 So. 388; *State* v. *Nelson*, 210 Ala. 664, 98 So. 715; *Fuqua* v. *City of Mobile*, 219 Ala. 1, 121 So. 696; *Fidelity & Deposit Co.* v. *Farmers Hardware Co.*, 223 Ala. 477, 136 So. 824; *Houston County Board of Revenue* v. *Poyner*, 236 Ala. 384, 182 So. 455.

The several subjects contained in the title and body of the Bradford Act are "to create a Department of Labor of the State of Alabama and to provide for its personnel, powers, functions, duties and the performance thereof," and "to prohibit executive, administrative, professional and supervisory employees from becoming members in certain labor organizations."

In my judgment no one can successfully maintain that under the title indicated, two distinct classes and material professions are not contained in the title and body of the act. They are distinct and independent of each other, do not contribute to the full accomplishment of the purpose

of the act, nor complement what is otherwise incomplete.

I observe with Chief Justice Stone that, "It follows irresistibly that both the title and the body of the act contain two subjects," and for this reason the Bradford Act must be pronounced a failure as a constitutional enactment and cannot be saved by the rule of severability. *Ballentyne* v. *Wickersham, supra.*

Since the matter before us is of public moment (*Bland* v. *St. John*, 13 So. (2d) 16; *Fore* v. *Alabama State Bridge Corp.*, 242 Ala. 455, 6 So. (2d) 508), I wish to add further that Sections 7 and 18 of the Bradford Act impose upon such unincorporated, voluntary labor organizations illegal conditions on the liberty of contract, the freedom of assemblage and the right to speak, which voluntary and fundamental rights are guaranteed by our state and federal constitutions.—Constitution of Alabama of 1901, §§ IV and XV; Federal Constitution, First and Fourteenth Amendments.

Such is the effect of the illegal restraint imposed by the enactment in the use of the word "function" when considered as a comprehensive term. It cannot mean less than to operate and is not limited in its use employed in the opinion of the majority. That is to say, this attempted legislation is a limitation on natural rights of individuals constituting the membership of unions. It denies the right of organization of local or national unions, denies the right of dissemination of union views and action touching its federation as a state or national union, and this amounts to a denial of the right of collective bargaining and due consideration of proposed strikes or picketing and the freedom of contract, local or national.

I am in accord with the decision of the Chief Justice in striking down Sections 12 and 17 of the act and in holding Sections 13 and 14 void in part. The doctrine of severability as construed by this court would not permit the elimination of the illegal sections indicated, and those in the opinion of the Chief Justice, and leave a constitutional enactment, under many authorities that obtain.

BROWN, JUSTICE (*Dissenting*).

Section 45, Article IV of the Constitution is, in part, a charter of our liberty and way of life. It definitely recognizes the fact that all wisdom does not reside in the Legislative Department of the State, that the Legislators in general originate and come from the great body of the common people who constitute the backbone of our civilization, but, nevertheless legislative bodies have in their

midst and a part thereof the astute and cunning who represent special interests, above the common good of all the people. And it is a matter of legislative history running back to the foundation of the republic that "Jokers" are embodied in legislative acts to protect and serve private interests to the detriment of the common good, and sometimes to punish some group or faction. Hence said section provides, and we find kindred provisions in most every state in the union, "*Each law shall contain but one subject which shall be clearly expressed in its title.*"

In *Ballentyne* v. *Wickersham*, it was observed: "There was a second abuse, against which this provision was levelled. The subject of the Act 'shall be *clearly expressed* in the title.' The intention of this was, that the title of the act or bill should inform the members of the legislature, and perhaps the public, of the subject on which the former were invited to vote and legislate. Matters foreign to the main objects of the bill had sometimes found their way into bills—surreptitiously, at times, it was charged—and thus the members were induced to vote for measures in ignorance of what they were doing. The constitutional provision intended to render a continuance of this abuse impossible."—*Ballentyne* v. *Wickersham*, 75 Ala. 533, 536.

What is the subject of Act No. 298, referred to as the Bradford Act? It is not to police and regulate labor in general nor to regulate organized labor in Alabama. The act deals with more than one subject, both in its title and body.

The first subject of the act is a State Department of Labor, and that subject is expressed in the title, "To create a Department of Labor of the State of Alabama, and to provide for its personnel, powers, functions and duties and the performance thereof." This the act undertakes to do by Sections 3, 4, and 5, 7, 19 and 20.

The next subject just as clearly expressed in the title and dealt with in the body of the act is, "to provide for the appointment by the Governor of *boards* of mediation and to provide for *their* personnel, powers, functions, duties and procedure." This was provided for in the Code of 1940, Tit. 26, § 28. Provision for the appointment of such boards from time to time is made in § 6 of the act, and the jurisdiction, powers and functions are prescribed and they are authorized to act wholly and independently of the "Department of Labor of the State of Alabama." Said § 6 provides, *inter alia*, "The board of mediation shall make a finding of facts and a recommendation for settling

such strike, lockout, or other dispute or disagreement, and, if such strike, lockout or other dispute or disagreement shall have been submitted for arbitration, a determination or award, which may be *enforced by any court of law or equity* in the same manner as other determinations or awards of matters submitted for arbitration. Such board shall remain in session no longer than is necessary to accomplish the purposes for which it was appointed, and in no event more than thirty days in which to make a determination, and the board shall be allowed an additional ten days time to make their findings of fact and recommendation for settling such strike, lockout or other dispute, or disagreement, and, as soon as it shall have rendered its findings of fact, recommendation, determination or award, it shall be discharged. Copies of each finding of facts, recommendation, determination and award shall be submitted to the Governor, and the Director of the Department of Labor and to each party or a representative of each party to such strike, lockout, dispute, or disagreement."

The only connection with or relation of the Board of Mediation to the Department of Labor is that a copy of the report made to the Governor must be filed with the Director of the Department of Labor, and when the board makes its report it passes out of existence.

True the boards of mediation are empowered to deal with labor disputes and strikes and controversies between organized labor and the employers of labor. This presents a case strictly analogous to the case presented in *Ballentyne* v. *Wickersham*, 75 Ala. 533, 534, 535, 540, where the title was, "An act to establish an inferior court of criminal jurisdiction for the County of Mobile, and to define the jurisdiction of said court and the criminal jurisdiction of Justices of the Peace in said County." The argument that the comprehensive subject was the administration of the criminal law in Mobile County was rejected and the act was held violative of the "second section of the fourth article of the Constitution of 1875", now § 45 of Art. IV of the Constitution, 1901, by the court speaking through Justice Stone, because both the title and body of the act contained and dealt with two distinct subjects, though both related to the enforcement of the criminal laws in Mobile County. That application of the constitution of that day is, or may be, regarded by some, as Old Stone's fogyism, but lest we forget, that interpretation, along with its re-adoption without change, was carried into the present

constitution, and is the voice of the people of Alabama, who ratified and adopted it.

Another distinct subject dealt with in the act, both in title and body is, "to prohibit political contributions by labor organizations."

What has that to do with a Department of Labor? It is more nearly related to elections and denies the right of organized labor to speak through the ballot box. True, it is, such organizations sometimes see but dimly their real interest, and follow the "will of the wisp" but if they want to be foolish, they have that right under the constitution, so long as other groups are allowed to do so. This is equal protection of law.

Sections 8, 9, 10, 11, 13, 14, 15, 16 and 18 relate to and deal with labor organizations, not through the department of labor, but through a direct legislative mandate, and form a definite and distinct subject, wholly apart from the dominant purpose of the act—To Create a Department of Labor. The purpose of these sections is punitive of labor, and no doubt were a dominant force in inducing the enactment of the law.

At the tail end of the Act, § 22 is added to effect a repeal in part of § 28, Title 26 of the Code of 1940, embodied in the chapter on industrial relation. Probably not half of the members of the Legislature had any knowledge that any such legislation was on foot. Certain it is there is no intimation in the title of the act that this repeal was contemplated.

Glamorous, fulsome and laudatory canons of constitutional and statutory interpretation are often used to camouflage and bolster up doubtful and vicious legislation, and to obscure and set at naught the provisions of the supreme law of the land—the constitution, which, in the end, must stand as a "pillar of cloud by day and a pillar of fire by night" if our civilization and way of life are to be preserved, but such glamorous and fulsome rules of statutory interpretation cannot, in our jurisdiction, save an act which is double in its title and body, from the condemnation of § 45 of the Constitution of 1901.

I shall not here collate the authorities, but rest content to refer to the authorities cited by my brother Justice Thomas, in his dissenting opinion, in which, for reasons stated above, I concur.

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Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES, *Petitioners,*

vs.

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE PETITIONERS

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INDEX

Subject Index

	Page
Brief for the Petitioners	1
The Opinion of the Court Below	1
Statement as to Jurisdiction	2
Statement of the Case	3
Specification of Errors	7
Summary of Argument	8
Argument	13
I. The record presents several cases or controversies, involving the Federal issues raised herein, within the meaning of Article III, Section 2, of the Federal Constitution	13
II. Sections 7 and 16, respectively, impose a previous general restraint on and prohibit the exercise of the civil rights of assemblage, speech and petition in violation of the First and Fourteenth Amendments to the United States Constitution	23
A. Section 7	23
1. The effect of Section 7 on the functioning of labor organizations	23
2. The functioning of labor organizations as involving the exercise of civil rights	25
3. Applicable decisions indicating assembling into and functioning through labor organizations involves exercise of civil rights	27
4. The limitations on the power of the State to legislate where exercise of civil rights is involved	31
a. The requirements of Section 7 as constituting the equivalent of a license	32
b. The area of allowable control in field of civil rights as distinguished from field of commercial activity. The distinction between restraint of civil rights and prevention of abuses	34

Page

B. Section 16 39
C. Conclusion 41

III. Sections 7, 15 and 16 constitute an arbitrary and unreasonable exercise of the State police power in violation of the due process clause of the fourteenth amendment 42
A. General Considerations 42
B. Section 7 46
C. Section 15 48
D. Section 16 53

IV. Sections 7, 15 and 16 deny petitioner equal protection of the laws in violation of the Fourteenth Amendment 57

V. Sections 7 and 16 deprive and deny petitioners rights granted and protected under the Wagner Act in violation of Article VI of the United States Constitution 68

VI. Sections 15 and 16 are so ambiguous as to deny due process of law 71

Conclusion 75

Table of Cases Cited

Adams v. Tanner, 244 U. S. 590 45
Adams Mfg. Co. v. Storen, 304 U. S. 307 18
Aetna Life Insurance Co. v. Haworth, 300 U. S. 227 . . . . . 18, 19
Allen-Bradley, etc. v. Wisconsin Employment Relations Board, 315 U. S. 740 69
American Federation of Labor, et al. v. Reilly, et al., No. 15446, decided by the Supreme Court of Colorado, December 21, 1944 30
Borden's Farm Products v. Baldwin, 283 U. S. 194 . . . . . 45, 47, 58
Brown v. Garrett, 201 U. S. 184 15
Bunting v. Oregon, 243 U. S. 426, 439 45
J. Burns Baking Co. v. Bryan, 264 U. S. 504 45
Cantwell v. Connecticut, 340 U. S. 296 32
Caroline W. Dobbins v. City of Los Angeles, 195 U. S. 223 45
Charleston & Western R. R. Co. v. Varnville Co., 273 U. S. 597, at 604 71

Page

Chicago, Burlington & Quincy Ry. Co. v. People of the State of Illinois, 200 U. S. 561 45
Colorado National Bank of Denver v. Bedford, Treasurer, 310 U. S. 41 18
Connally v. Union Sewer Pipe Co., 184 U. S. 450 67
Cooley v. Board of Wardens, 12 How. (U. S.) 299 69
Cox v. New Hampshire, 312 U. S. 569 32
Crampton v. Zabriskie, 101 U. S. 61 19
Crutch v. Kentucky, 141 U. S. 47 33
Davidow v. Wadsworth Mfg. Co. (Mich.), 178 N. W. 776, 12 A. L. R. 605 65
DeJonge v. Oregon, 299 U. S. 353 27, 38
Follett v. Town of McCormick, 64 Sup. Ct. 717 28, 30
Frost v. Corporation Commission, 278 U. S. 515 59, 60, 67
Gibbons v. Ogden, 9 Wheat. (U. S.) 1 67
Grosjean v. American Press Co., 297 U. S. 233 34
Quinn v. United States, 238 U. S. 347 67
Hague v. C. I. O., 307 U. S. 496 27
Hall v. Bland, 227 Ala. 64 19
Henning Jacobson v. Commonwealth of Massachusetts, 197 U. S. 11 45
Herndon v. Lowry, 301 U. S. 242 27
Hickey v. Levitan, 190 Wis. 646, 48 A. L. R. 434 67
Hill v. State, decided by the Supreme Court of Florida, November 28, 1944 (C. C. H., p. 67,040) 35
Hines v. Davidowitz, 312 U. S. 52 69
Home Building and Loan Association v. Blaisdell, 290 U. S. 398 51
International Association of Machinists v. National Labor Relations Board, 311 U. S. 72 73
International Text Book v. Pigg, 217 U. S. 106 32, 70
Krump v. Byram, 158 Ala. 311 19
Lanzetta v. New Jersey, 306 U. S. 451 72, 74
Levy Leasing Co. v. Siegel, 258 U. S. 242, 246 45
Liggett v. Baldridge, 278 U. S. 105 45
Lovell v. Griffin, 303 U. S. 44 31
Manchester v. Leiby, 117 Fed. (2d) 661 32
McGoldrick v. Gulf Oil Corp., 309 U. S. 414 69
McLean v. Arkansas, 211 U. S. 539, 548, 51 45

Page

Missouri Pacific R. R. Co. v. *Porter*, 273 U. S. 431, at 435 70
Mugler v. *Kansas*, 123 U. S. 623 43
Muller v. *Oregon*, 208 U. S. 412, 419–420 45
Murdock v. *Pennsylvania*, 319 U. S. 105 29,31,34,35
Mutual Loan Co. v. *Martell*, 222 U. S. 225, at 233 43
Myers v. *Anderson* 238 U. S. 368 67
Nashville C. & St. L. R. Co. v. *Wallace*, 288 U. S. 249 18
National Labor Relations Board v. *American Potash & Chemical Co.*, 98 Fed. (2d) 488 70
National Labor Relations Board v. *Jones & Laughlin Steep Corp.*, 301 U. S. 1 25
National Labor Relations Board v. *Luxuray, Inc.*, 123 Fed. (2d) 106 70
National Labor Relations Board v. *Richter's Bakery*, 140 Fed. (2d) 870 70
Nebbia v. *New York*, 291 U. S. 502 42,44
Nixon v. *Condon*, 286 U. S. 73 41
Nixon v. *Herndon*, 273 U. S. 536 40
Pierce v. *Society of Sisters*, 268 U. S. 510 17
Price v. *Illinois*, 238 U. S. 446 45
Schneider v. *State*, 308 U. S. 147 31,32,40
Smith v. *Cahoon*, 283 U. S. 553 67
Soss Mfg. Co., In the Matter of, 56 N. L. R. B. No. 70 70
Southern Railway v. *Green*, 216 U. S. 400 58,65
Sprague v. *Thompson*, 118 U. S. 90 67
State v. *Butterworth*, 104 N. J. L. 549, 142 A. 57, 58 A. L. R. 744 30
State v. *Bynum*, 243 Ala. 138, 9 So. (2d) 134 24
State v. *Ellis*, 201 Ala. 295, 78 So. 71 24
Thomas v. *Collins*, 174 S. W. (2d) 958 (Texas), Sup. Ct. No. 14, October Term, 1944 ..... 20,25,29,31,35,36,37,38, 39,42,43,69
Thornhill v. *Alabama*, 310 U. S. 88 28,34,37,41
Tigner v. *Texas*, 310 U. S. 141 66
Treigle v. *Acme Homestead Association*, 297 U. S. 189 51
Truex v. *Corrigan*, 257 U. S. 311 45
Try-Me Bottling Co. v. *State*, 235 Ala. 207, 178 So. 231 24
United States v. *Carolene Products Co.*, 304 U. S. 144 58
United States v. *Cohen Grocery Co.*, 255 U. S. 81 71

Page

United States v. *Reese*, 92 U. S. 214 ..... 72, 74
United States v. *White*, 322 U. S. —, Adv. Sheets, Vol. 88, No. 16, p. 1149 19
Valentine v. *Chrestensen*, 316 U. S. 52 36
Voeller v. *Neilston Warehouse Co.*, 311 U. S. 531 20
Western Union Telegraph Co., In the Matter of, 58 N. L. R. B. No. 233 73
West Virginia v. *Barnette*, 319 U. S. 624 36
Whitney v. *California*, 274 U. S. 357 27
Wilkinson v. Stiles, 200 Ala. 279, 76 So. 45 67
Wolf Packing Co. v. *Court of Industrial Relations*, 262 U. S. 522 46
Wright v. *Central Kentucky Natural Gas Co.*, 297 U. S. 537 18

STATUTES CITED

Act of Congress of February 13, 1935, Sec. 237-b, 28 U. S. C. A. Sec. 344-b 2
Alabama Acts, 1943 2
Alabama Declaratory Judgments Statute (Title 7, Secs. 156-168, Code of 1940) 3, 14
Labor Peace Act (Senate Bill 183. Colo. Laws of 1942) .. 41
National Labor Relations Act, 49 Stat. 449 .....
Revenue Act of 1943 24
Title I, Sec. 117(a) 58 Stat. 36, 26 U. S. C. Sec. 54(f) 24
53 Stat. 28, 26 U. S. C. Sec. 54 (a) (b) (d) 24
53 Stat. 62, 26 U. S. C. Sec. 145 24
Railway Labor Act, 48 Stat. 1185 .....

MISCELLANEOUS

Borchard, "Declaratory Judgments," Second Ed., p. 764, et seq 18
Bureau of Labor Statistics, U. S. Dept. of Labor, Report of 55
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Page

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House Journal, Alabama Legislature, Session 1943 45
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES, *Petitioners*,

vs.

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE PETITIONERS

The Opinion of the Court Below

The opinion of the Supreme Court of Alabama is reported in 18 Southern (2d) 810, Adv. Sheets, application for rehearing denied by the Alabama Supreme Court on June 22, 1944. A copy of such opinion is appended to the Petition for Writ of Certiorari filed herein as Exhibit "B" and appears in the Record herein at page 321.

Statement as to Jurisdiction

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U.S.C.A., Section 344-b.

This case is one in which the validity of Sections 7, 15 and 16 of the so-called "Bradford Act" (Alabama Acts 1943, p. 253) is drawn in question upon the ground that such sections on their face and as construed in the opinion and judgment of the Supreme Court of Alabama are repugnant to the Constitution of the United States, and in particular to the Fourteenth Amendment thereto and to the First Amendment thereto. The decision of the Alabama Supreme Court was in favor of the validity of the sections in question. The case was finally disposed of by the courts of Alabama when the Supreme Court of that State on June 22, 1944, entered its order denying application for rehearing. Every possible remedy within the State has been exhausted. The Federal questions as designated in the "Specification of Assigned Errors," infra, were raised at every possible stage in the proceedings below. Thus, the complaint challenged each of the sections as being in violation of the Federal Constitution; the assignments and cross-assignments of error raised such questions; the Federal questions were briefed and argued before the State Supreme Court, and the State Supreme Court passed upon the Federal questions in its opinion. Finally, the application for rehearing again raised the Federal questions.

On September 22, 1944, Mr. Justice Hugo L. Black issued an order extending the time within which to file a petition for writ of certiorari to October 12, 1944. A petition was filed prior to such date, and on November 20, 1944, this Court granted the writ.

Statement of the Case

This case involves an action for a declaratory judgment commenced by petitioners as plaintiffs in a suit filed pursuant to the Alabama Declaratory Judgments Statute (Title 7, Secs. 156-168, Code of 1940) in which it was sought to have declared as unconstitutional certain sections of what is commonly referred to as the Bradford Act (Act of 1943, p. 253), regulating labor organizations and their members, as such sections were threatened to be applied to the plaintiffs.

The Bradford Act was passed by the Alabama Legislature in 1943, and became effective upon its approval by the Governor of Alabama on June 29, 1943. (A copy of the Act is appended to the Petition for Writ of Certiorari filed herein as Exhibit "A".) The Act is a comprehensive enactment dealing with labor. It establishes a Department of Labor and sets up mediation machinery; it seeks to license the functioning of labor organizations by requiring the filing of various reports and financial statements and the payment of annual fees; it regulates the internal affairs and activities of labor organizations; and it regulates various aspects of picketing, boycotting and striking. Civil and criminal liabilities are imposed for violations of the provisions of the Act. Only three sections of the Bradford Act (Secs. 7, 15 and 16) are involved under this appeal; the remaining sections of the Act were either held to be unconstitutional by the Alabama Supreme Court, or their validity was not challenged.

Section 7 prohibits labor organizations from "functioning" in the State of Alabama, except upon the compliance with certain conditions, among which are the filing of copies of constitutions and by-laws of local and international organizations; the payment of an annual fee; and the filing of an annual report containing the name and address of

the organization, the names of its principal officers together with the total remuneration received by each officer, the date of election of such officers, the number of paid up members, a complete and detailed financial statement of all fees, dues and other receipts, together with a list of all disbursements with names of recipients and purposes therefor, and a complete statement of all assets owned by the organization.

Section 15 makes it unlawful for any labor organization or member or officer thereof to demand, collect or receive, directly or indirectly, from any person any sum of money (other than initiation fees or dues) "as a work permit or as a condition for the privilege to work".

Section 16 makes it unlawful for "any executive, administrative, professional, or supervisory employee" to become a member of or to be accepted into membership by any labor organization if such organization permits membership to employees other than those above named.

The petitioners (plaintiffs below) are the Alabama State Federation of Labor; the American Federation of Labor, the United Brotherhood of Carpenters and Joiners of America, Local No. 103 of such organization, and B. E. Jones, a member and officer of said Local No. 103 who is also an employee employed in an administrative or supervisory capacity (R. 2). The plaintiff labor organizations brought the action on their own behalf, as well as on behalf of their members located in the State of Alabama (R. 9, 10).

The defendants are Robert E. McAdory, Solicitor of Jefferson County; Holt McDowell, Sheriff of Jefferson County; and William McQueen, Acting Attorney General of the State of Alabama, state officials charged with enforcement of the Bradford Act (R. 18).

The complaint for declaratory judgment, in so far as relevant to the prayer that Sections 7, 15 and 16 be adjudged unconstitutional and void, alleged that Sections 7 and 16

imposed previous general restraints and prohibitions upon the exercise by plaintiffs of their civil rights of assembly and speech; that Sections 7, 15 and 16 constituted an arbitrary and unreasonable exercise of the state police power, depriving plaintiffs of the rights of liberty and property protected under the Fourteenth Amendment; that Sections 7, 15 and 16 were discriminatory as to plaintiffs and in violation of the equal protection of the laws clause of the Fourteenth Amendment; that Sections 15 and 16 were so vague and indefinite as to violate the due process of law clause of the Fourteenth Amendment; that Sections 7 and 16 violated Article IV of the United States Constitution providing that the Constitution and Laws of the United States shall be the supreme law of the land, in that such sections deprive of rights granted and guaranteed under the National Labor Relations Act; and that Section 15 violated Article I, Section 10, of the United States Constitution, providing that no State shall make laws impairing the obligations of contracts, in so far as such section made illegal various provisions contained in existing constitutions and by-laws of plaintiff organizations. The complaint alleged specifically the manner in which plaintiffs were deprived of the various constitutional rights asserted, and prayed for an adjudication that Sections 7, 15 and 16, among others, be declared unconstitutional, null and void (R. 2-24).

After certain preliminary motions were disposed of, the case went on for trial before three judges of the Circuit Court of Jefferson County. To obviate the taking of testimony, the parties stipulated as to the bulk of the factual matters alleged in the petition, and, in addition, affidavits by William Green (President of the American Federation of Labor), W. O. Hare (Secretary-Treasurer of the Alabama State Federation of Labor), and Sam Roper (President of the Alabama State Federation of Labor), setting forth certain facts in respect to the operation and function-

ing of labor organizations generally and in the State, were offered in evidence, with the agreement that each affiant would testify to the matters set out in his affidavit if he were sworn and examined in open court (R. 226). In addition, certain other witnesses were examined. Thus, either by stipulation of facts or the introduction of uncontradicted evidence there was competently proved: plaintiffs' interest in the proceeding, their controversy with the defendants, and their standing to raise the constitutional issues; the manner in which labor organizations functioned and operated, with particular reference to the activities and functioning of unions and their members as concomitants of the rights of assembly and speech; the manner in which plaintiffs were aggrieved by reason of the threatened enforcement of the various sections of the Act challenged as unconstitutional; the lack of a rational basis for the particular sections and their effect as a practical matter upon the ordinary functioning of labor organizations; and the manner in which such sections were discriminatory.

The Circuit Court held certain sections of the Act to be constitutional, among them being Section 7, held certain other sections to be unconstitutional, and refused to pass upon Sections 15 and 16 (R. 221). The judgment of the Circuit Court was appealed to the Supreme Court of the State upon assignments and cross-assignments of error, in which the constitutional issues were once again raised (R. 318-319). After hearing argument, the Supreme Court, on May 25, 1944, in a 4 to 2 decision, sustained the judgment of the Circuit Court and, in addition, declared that Sections 15 and 16 of the Bradford Act were constitutional. In its decision the Court resolved all procedural and jurisdictional questions in favor of petitioners and held that they had a standing to obtain an adjudication under the Alabama Declaratory Judgments Act concerning the constitutionality of Sections 7, 15 and 16 among others. Application for re-

hearing was made by both parties, which application was denied on June 22, 1944 (R. 360).

Specification of Errors

The Supreme Court of Alabama erred in the following respects:

1. In holding that Sections 7 and 16 of the Bradford Act do not impose a previous general restraint on or constitute a denial of the exercise by petitioners of their civil rights of assemblage and speech in violation of the First and Fourteenth Amendments to the United States Constitution.

2. In holding that Sections 7, 15 and 16 do not constitute an arbitrary and unreasonable exercise of the state police power and a deprivation of petitioners' rights of liberty, property and contract protected under the Fourteenth Amendment to, and under Article I, Section 10 of, the United States Constitution.

3. In holding that Sections 7, 15 and 16 are not discriminatory and a denial to petitioners of the equal protection of the laws in violation of the Fourteenth Amendment.

4. In holding that Sections 7 and 16 do not deny petitioners rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution making the Constitution and Laws of the United States the supreme law of the land.

5. In holding that Sections 15 and 16, prescribing certain crimes not known to the common law, are not so ambiguous as to deprive petitioners of due process of the law in violation of the Fourteenth Amendment to the United States Constitution.

Summary of Argument

I

The present case involves at least two cases or controversies within the meaning of such terms as used in Article III, Section 2, of the Federal Constitution. Involved in such cases or controversies are all of the Federal issues herein briefed, and the record so shows. One such case or controversy exists between petitioner Local #103, a labor organization located in Birmingham, Alabama, and the defendant law enforcement officials of the State of Alabama. Such law enforcement officials have threatened to institute criminal proceedings against such petitioner and otherwise take steps to require petitioner to comply with the requirements of Sections 7, 15 and 16 of a law of Alabama, known as the "Bradford Act." Under Section 7, such petitioner is required to make detailed financial disclosures and otherwise take steps amounting to the taking out of a license as a condition of "functioning" in Alabama in any respect whatsoever. Under Section 15, such petitioner is prohibited from receiving any sum of money (other than initiation fees or dues) as a "work permit." Such requirement interferes with existing reasonable practices set forth in its constitution and by-laws, disrupts its union shop agreements, and deprives it of a source of income. Under Section 16, such petitioner is denied the right to accept or retain in membership any administrative or supervisory employee. This will result in a severe loss of present and future membership. Such petitioner has asserted that it intends not to comply with the requirements of Sections 7, 15 and 16, alleging that such sections deprive it of rights granted under Federal laws and under the Constitution. The State law enforcement officers have threatened to enforce the Act as against Local #103. In order to resolve the controversy between

it and the State law enforcement officers and remove the peril to its rights, petitioner applied for and was granted, under the Alabama Declaratory Judgments law, a judicial declaration in respect to the constitutionality of Sections 7, 15 and 16 as such sections were threatened to be applied to it.

The second case or controversy involves petitioner B. E. Jones. Such petitioner is a citizen of the United States, a resident of Alabama, and a member and officer of Local #103, and is a so-called "supervisory" employee, being employed as a foreman. He has likewise been threatened with criminal and civil proceedings if he does not comply with Sections 7, 15 and 16. He has asserted that he does not intend to comply with such sections, because they deprive him of civil and property rights and of rights granted him under the National Labor Relations Act. As a supervisory employee, his right to continue membership in Local #103 has been threatened. As a person and citizen, his right to assemble into and speak and petition in and through a labor organization has been restrained by the requirements of Section 7. Accordingly, he joined in an application for a judicial declaration that Sections 7, 15 and 16 as threatened to be applied to him were unconstitutional.

Thus, at least in so far as concerns petitioner Local #103 and petitioner Jones, there exists a concrete case admitting of a definitive determination of the legal rights of the parties in an adversary proceeding.

II

Section 7, which forbids any labor organization to "function" in any respect in the State until certain conditions imposed by Section 7 are met, operates to previously restrain petitioner Jones in his right to meet and assemble with fellow workers in a labor organization, and in and through such labor organizations to disseminate informa-

tion and petition for redress of grievances. The association of working people in labor organizations is a concomitant of the right of speech, assembly, press and petition, and the right to form and function through labor organizations has the same standing under the Federal Constitution as the right to form and function through political or religious organizations. Consideration of the general nature and purpose of labor organizations supports the conclusion that labor organizations are essential to the functioning of democracy in an industrial society. The cases recently decided by this Court indicate clearly that the First Amendment assures the broadest tolerable exercise of assemblage, speech and press for economic purposes in and through labor organizations, as well as for political, scientific and religious ends in and through political, scientific or religious organizations. Section 7 constitutes in effect a licensing of the right of assembly and speech, but even if it be considered mere registration as a condition to the exercise of such rights, it nevertheless operates previously to restrain the exercise of rights basic to our democracy—rights freely and unconditionally granted under the Bill of Rights. Petitioners' argument does not imply that the operations of labor organizations are above regulation or beyond the law. Specific abusive conditions and practices can be and have been made criminal without impairing the exercise of the bare right of assembly and speech.

III

Sections 7, 15 and 16 also deprive of rights and liberties in violation of the due process clause of the Federal Constitution. The requirements of such sections are arbitrary and unreasonable, and without rational basis. The record discloses that there are no existing conditions or circumstances which in any way can serve to justify the im-

position of the requirements, and that the requirements will burden labor organizations out of all proportion to any possible public benefits. Traditional practices, including those long specified in existing union constitutions and by-laws have been arbitrarily outlawed. The record shows that these practices are indispensable to the proper functioning of labor organizations and, far from resulting in any harm to the public, inure to the public benefit. Public interest does not require, nor do existing conditions warrent, the imposition of the requirements in question; reasonable men, viewing the requirements in the light of the factual disclosures contained in the record, would agree that there is no rational basis for the legislation.

IV

Sections 7, 15 and 16 are applicable only to associations of workers and not to associations of employers or other associations whose impact upon the public is similar to that of labor organizations; accordingly such sections are discriminatory. In particular such sections deny petitioner Local #103 equal protection of the laws, for the reason that other classes of labor organizations (unions of railroad employees) situated similarly to petitioner have been exempt from the requirement of such sections. The exemption of labor organizations of employees subject to the Railway Labor Act is arbitrary and without basis, the Railway Labor Act accomplishing none of the purposes of and having no relevance to the objectives of the Alabama law. The record affirmatively discloses that there is no factual difference between the manner in which organizations of railroad employees function, in so far as the requirements of Sections 7, 15 and 16 are concerned and the manner in which organizations of non-railroad employees function—as a matter of fact, both such organizations are often affili-

ated with the same parent organization and operate under identical constitutions and by-laws.

V

Sections 7 and 16 deprive petitioners of rights granted under the National Labor Relations Act. Section 7, by restraining and conditioning every aspect of the "functioning" of labor organizations, conditions the right to engage in collective bargaining, as well as the right to engage in concerted activities for mutual aid and protection, although both such rights are unconditionally granted under Section 7 of the National Labor Relations Act. Section 16 denies supervisory and administrative employees the right to join labor organizations of their own choosing, and of such organizations to admit them, contrary to the specific grants of Section 7 of the National Labor Relations Act. There exists an irreconcilable conflict between the requirements of Sections 7 and 16 and the exercise of rights granted under the National Labor Relations Act. The State cannot thus condition or limit rights granted by Congress in the effectuation of a valid Federal purpose lest such purposes be frustrated.

VI

Sections 15 and 16 are so ambiguous as to deny due process of law. No definitions of the terms "work permit" or "supervisory or administrative employee" are contained in the Act; individuals and labor organizations are required to guess concerning just what practices constitute the exaction of a "work permit," or what classes of employees constitute "administrative" or "supervisory" employees. Criminal legislation phrased so vaguely that persons of reasonable intelligence would necessarily differ as to its meaning and application violates the first essential of due process.

Argument

I

THE RECORD PRESENTS SEVERAL CASES OR CONTROVERSIES, INVOLVING THE FEDERAL ISSUES RAISED HEREIN, WITHIN THE MEANING OF ARTICLE III, SECTION 2, OF THE FEDERAL CONSTITUTION.

In granting certiorari, this Court requested counsel "to discuss in their briefs and on oral argument the question whether the record presents one or more cases or controversies within the meaning of Article III, Section 2, of the Constitution, and to state the precise facts giving rise to and the issues involved in each such case or controversy, if any."

It is respectfully submitted that the record herein presents at least two cases or controversies within the meaning of Article III, Section 2, of the Federal Constitution, in which cases are involved all of the constitutional issues raised in this appeal. One such case involves petitioner Brotherhood of Carpenters, Local #103, of Birmingham, Alabama, which seeks to protect the civil rights of its members and its own property rights under the Fourteenth Amendment from threatened and imminent impairment and destruction by the acts of law enforcement officials of the State of Alabama acting pursuant to the law herein challenged. The other such case involves petitioner B. E. Jones, a citizen of the United States and a member and officer of such local, who seeks to protect his civil and property rights against such threatened destruction.

As stated in the Statement of the Case, *supra*, this case was brought by certain petitioners, among whom were Local #103 and B. E. Jones, under the Alabama Uniform

Declaratory Judgments Act (Title VII, Sections 156-168, Alabama Code of 1940)[1] to secure a judicial declaration that Sections 7, 15 and 16, among others, of an Alabama act regulating labor organizations, commonly referred to as the "Bradford Act" (Act of 1943, p. 293), was, as threatened to be applied to petitioners, invalid under various provisions of the Federal Constitution. The Alabama Supreme Court held that such petitioners were entitled to the declaratory decree under the Alabama Declaratory Judgments Act and proceeded to render such decree, declaring that Sections 7, 15 and 16, as threatened to be applied to petitioners, were not in contravention of the Federal Constitution.

The record indicates that the following minimum facts have been established, which facts, it is respectfully submitted, give rise to the issues argued and decided below and presented here, and which facts clearly indicate that several cases or controversies exist within the meaning of Article III, Section 2, of the Federal Constitution.

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[1] The pertinent provisions of the Alabama Declaratory Judgments Act read as follows:

"156. Scope. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

"157. Power to construe, etc. Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder."

"161. When refusal proper. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding."

Petitioner, Local Union #103 of the United Brotherhood of Carpenters & Joiners of America, is a labor organization functioning in Jefferson County, Alabama (R. 2, and stipulated as true R. 226[2]). Immediately upon passage of the Bradford Act, such petitioner (as well as other local labor unions located in Jefferson County, Alabama, represented by and through petitioner Alabama State Federation of Labor with which such local unions are affiliated (R. 2)), was confronted with the requirement that it and its members comply (1) with Section 7 of the Bradford Act requiring it to file certain statements and otherwise take steps tantamount to the taking out of a license as a condition to its functioning in any manner within the State; (2) with Section 15 making it unlawful for it to receive any sum of money (other than initiation fees or dues "as a work permit or as a condition for the privilege to work"; and (3) with Section 16 making it unlawful for it to accept into membership any executive, administrative or supervisory employee. Failure of petitioner, Local Union 103, and other local unions similarly situated to comply with these sections constituted a crime under Section 18 of the Act. Such petitioner, under its constitution and by-laws, had for many years issued so-called work permits in certain situations (R. 20-21, 70, 16-18[3]). It also took into membership supervisory

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[2] Hereafter, unless otherwise specified, any record references to pages 2 through 29 of the record, involving the allegations of the complaint, can be accepted as admitted to be true under an "Agreement as to Certain Facts" set forth at R. 226, wherein almost all of the allegations of the complaint were stipulated to obviate the taking of testimony.

[3] R. 16 contains paragraph 10 of the complaint, which alleges certain facts as to the issuance of work permits. While on the record, Section 10 of the complaint is not admitted as true under the agreement as to facts, such allegation was at all times treated and regarded as true by the parties hereto during the course of the proceedings below, and it was so regarded by the Alabama Supreme Court. Such allegation can accordingly be accepted as true by this Court. See *Brown* v. *Garrett*, 201 U. S. 184.

and administrative employees as well as non-supervisory or administrative employees (R. 12, 21). Both of these practices were alleged and admitted to be necessary for the proper conduct of its affairs (R. 21-22). Notwithstanding the criminal sanctions that might have been invoked, such petitioner declared it to be its intention not to comply with Sections 7, 15 and 16 (R. 13), such petitioner claiming that such sections violated the Federal Constitution in various respects as herein discussed (R. 7-11). It was admitted not only that it was the duty of the respondents, Robert E. McAdory, as Solicitor of Jefferson County, Alabama, and Holt McDowell, as Sheriff of Jefferson County, Alabama, to enforce Sections 7, 15 and 16 (R. 11), but that such respondents actually were preparing to and would enforce said Sections 7, 15 and 16 as against such petitioner (R. 19). In addition, the Director of the Department of Labor had addressed various communications to petitioner, notifying it (a) that if Section 7 were not complied with by February 21, 1944, immediate steps would be taken to enforce such section (R. 263), and (b) that Section 16 must be complied with immediately upon passage of the Act under threat of criminal prosecution (R. 263-4, 311). These communications had resulted in considerable disruption of such local, and loss of members and dues (R. 313).

Petitioner B. E. Jones is a citizen of the United States, a resident of the State of Alabama, and a member and officer of petitioner Local Union #103 (R. 2-4). As an individual, he, together with other members of Local #103 (on behalf of whom Local #103 is likewise appearing), upon passage of the Bradford Act was confronted with the requirement of Section 7 of the Act that certain conditions be fulfilled before he could assemble with his fellow workers for purposes of discussion, dissemination of information, and the taking of concerted action with respect to

his economic problems—that he and those thusly associated with him must, in effect, obtain a license prior to the time that they could in any respect whatsoever function in and through a labor organization. Furthermore, said petitioner Jones, as a supervisory employee (R. 11-12, 299), was confronted with criminal prosecution if he remained a member of his local union in violation of Section 16 making it unlawful for a supervisory employee to become or remain a member of a labor organization. Petitioner Jones declared it his intention not to comply with Sections 7 and 16 (R. 7, 18), stating that his civil and property rights as protected under the First and Fourteenth Amendments were infringed by said Sections 7 and 16 (R. 13, 8-11). It was admitted that it was the duty of the defendant law enforcement officials to enforce Sections 7 and 16, and that they were preparing to and would enforce Sections 7 and 16 as to plaintiff Jones (R. 19).

From the foregoing facts it is clear that an actual and substantial controversy existed and exists between petitioners, Local Union #103 and B. E. Jones, on the one hand and the respondent enforcement officials of Jefferson County on the other. Such petitioners asserted that Sections 7, 15 and 16 were unconstitutional and void, would be injurious to them if applied but had no application to them; the respondents insisted upon compliance. The relief such petitioners sought was a definitive adjudication under the State Declaratory Judgments Act of their disputed constitutional right to be free of the requirements of Sections 7, 15 and 16, requirements which, if applied, would affect petitioners immediately and adversely.

It is clear that had such petitioners alleged resulting irreparable injury, the remedy of injunction would have been available to them. *Pierce* v. *Society of Sisters*, 268 U. S. 510. The fact that the petitioners applied for relief through a modified procedure—that of declaratory judgment—in-

stead of through other and more traditional channels is immaterial. *Nashville C. & St. L. R. Co.* v. *Wallace*, 288 U. S. 249. As is indicated by that case, if the other elements of a case or controversy are present, there is no need in an action challenging the validity of State enactments, for a prayer for injunction or for allegations of threatened irreparable injury. In that case this Court took jurisdiction over an appeal from a declaration of the Supreme Court of Tennessee made under the Uniform Declaratory Judgments Act of that State, affirming the validity of a state law as against allegations that the law violated the Federal Constitution, and the facts giving rise to a case or controversy were substantially the same as they are in the present case. See also *Adams Mfg. Co.* v. *Storen*, 304 U. S. 307; *Wright* v. *Central Kentucky Natural Gas Co.*, 297 U. S. 537; *Colorado National Bank of Denver* v. *Bedford, Treasurer*, 310 U. S. 41, in each of which cases this Court considered the constitutionality of state legislation on appeal from a declaratory judgment of the highest court of the State. As to the desirability and, indeed, the preferability of adjudicating issues of the constitutionality of state statutes through the declaratory judgment procedure, see Borchard, "Declaratory Judgments", Second Edition, p. 764, et seq.

It is respectfully submitted that the dispute between Local Union #103 and B. E. Jones and the law enforcement officials of Jefferson County gives rise to and constitutes a case or controversy within the meaning of those terms as used in the Federal Constitution and as discussed at length in the case of *Aetna Life Insurance Company* v. *Haworth*, 300 U. S. 227. On the one hand, petitioners claim that they are under no obligation to comply with Sections 7, 15 and 16; that to comply would adversely affect them, and that they intend not to comply. On the other hand, defendant prosecuting officials assert that the sections do apply to peti-

tioners; that it is their duty to enforce petitioners to comply, and that they intend to and will enforce compliance by petitioners. Assuredly, there is here present "a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged;" • • • "the dispute relates to legal rights and obligations;" • • • "the dispute is definitive and concrete, not hypothetical or abstract;" and there exists "a real and substantial controversy admitting of specific relief through a decree of a conclusive character." *Aetna Life Insurance Company* v. *Haworth*, *supra*.

It should be noted, in addition, that petitioners, Local #103 and B. E. Jones, raise the issues of constitutionality of Sections 7, 15 and 16 of the Bradford Act in their capacities of taxpayers of the State of Alabama, the record indicating that both such petitioners are taxpayers (R. 4), and it being alleged and admitted that large sums of the taxpayers' money would be spent in the enforcement of the law, which expenditures would be unnecessary if the law were unconstitutional (R. 19). Under the laws of Alabama a taxpayer is entitled to maintain a proceeding to enjoin or restrain the misuse of public funds by public officers in an attempt to enforce an unconstitutional statute: *Krump* v. *Bynum*, 158 Ala. 311; *Hall* v. *Bland*, 227 Ala. 64. See also *Crampton* v. *Zabriskie*, 101 U. S. 61.

Finally, it was alleged and admitted (R. 19) that it was in the public interest that the constitutionality of the Bradford Act be determined by the Alabama Court at the earliest practicable moment.

As to the standing of petitioner Local #103 to raise the various constitutional issues, it is clear that such petitioner, as an entity recognized as a person under the law (*United States* v. *White*, 322 U. S. ——, Adv. Sheets, Vol. 88, No. 16, p. 1149), is in a position to assert, as it has asserted (R. 7-12), that Sections 7, 15 and 16 constitute

an unreasonable exercise of the State police power and operate to its prejudice; that these sections deny it equal protection of the laws by reason of the exemption from the Act of railway labor unions; that these sections deprive it of due process of law by reason of their vagueness and ambiguity; that Section 15 violates the obligations of its contracts as expressed in its by-laws; and that Sections 7 and 16 deprive it of rights granted and guaranteed under the National Labor Relations Act in violation of Article I, Section 10, of the Federal Constitution.[4] In so far as petitioner, Local Union #103, alleges deprivation of rights of assembly and speech, it does so and has a standing to do so in a representative capacity, having brought the action on behalf of its individual members (R. 2, 8-10, 13). See *Voeller* v. *Neilston Warehouse Co.*, 311 U. S. 531, in which this Court, speaking through Justice Black, permitted a corporation to assert a constitutional right on behalf of the majority of its stockholders, the Court stating:

> "There is nothing unusual in such a holding; the rights of parties are habitually protected in court by those who act in a representative capacity; an executor or administrator may act for the beneficiaries of an estate; a receiver may represent the collective interests of stockholders, partners, or creditors; a lawyer may appear for his clients; and a corporation may represent the collective interests of its shareholders. In this case, in fact, the unappealed ruling of the trial judge on the attempted intervention by the majority stands as an adjudication that in those respects here material the majority had committed their interests to the corporation itself."

See also *Thomas* v. *Collins*, No. 14, October Term, 1944, decided by this Court on January 8, 1945, in which the Court

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[4] The Record (R. 236) indicates that members of Local #103 are employed by employers subject to the National Labor Relations Act.

declared that "The right either of workmen *or of unions* under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others." (Emphasis supplied.) From this it would appear that a union in itself, at least where it is a voluntary, unincorporated association of individuals, would have a standing to assert infringement of rights of assembly and speech when such rights are denied to the membership as a whole.

In any event, the individual petitioner, B. E. Jones, as a citizen of the United States and as a member of Local Union #103, would clearly have a right to raise the civil rights issues, as he has done. As a supervisory employee and member of Local #103, petitioner Jones would have a standing to challenge the constitutionality of Section 16 as depriving him of both civil and property rights. It is true that the Alabama Supreme Court held (R. 351), in construing the effect of the last sentence of Section 16 protecting existing union insurance benefits, that "advancement to the position of superintendent would not be prohibited" to any member holding existing union insurance contract rights. Jones, however, is presently a supervisory employee, and thus the Court's construction apparently would not affect him even though he does hold an insurance contract with Local #103. In any event, Jones' right to continue as a member of Local #103 cannot be predicated upon anything as tenuous as his holding insurance benefits therein, Jones having the undoubted right to relinquish such benefits at any time. If he has a right, either under the First Amendment or under the National Labor Relations Act, to assemble with his fellow workers into a labor organization, as has been alleged, this right cannot be conditioned or

imperilled or rendered insecure by the imposing of any requirement that he continue insurance benefits, and Jones would clearly have a right to resist such attempt by the State to condition such federally granted right.

It is respectfully submitted that petitioner, Local Union #103, and petitioner, B. E. Jones, alone have a standing to raise all of the constitutional issues in this case, and that the facts as admitted or proved clearly indicate that a real and actual controversy exists between these petitioners and the defendant prosecuting officers. Accordingly, it is unnecessary to discuss the status of the other petitioners in the case. Suffice it to say that petitioners, American Federation of Labor, Alabama State Federation of Labor and the United Brotherhood of Carpenters & Joiners of America, appear primarily in a representative capacity on behalf of their affiliates and members located within the State of Alabama, whose interests are threatened by the Alabama legislation. In addition, petitioner, United Brotherhood of Carpenters & Joiners of America, asserts impairment of the obligation of its contracts by virtue of the nullification of its work permit provisions contained in its constitution (R. 20), as well as the nullification of those provisions of its constitution requiring supervisory employees in the trade to be members of the organization (R. 21) by reason of defendants' threatened acts.

II

SECTIONS 7 AND 16, RESPECTIVELY, IMPOSE A PREVIOUS GENERAL RESTRAINT ON AND PROHIBIT THE EXERCISE OF THE CIVIL RIGHTS OF ASSEMBLAGE, SPEECH AND PETITION IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The first issue involved in this appeal is whether Sections 7 and 16 of the Bradford Act impair the exercise by members of petitioner Local Union #103, including petitioner Jones, of their civil rights of assembly, press, speech and petition.

A. Section 7

1. The Effect of Section 7 on the Functioning of Labor Organizations

Under Section 7, every labor organization "functioning" in Alabama is required "before doing so" to file a copy of its own and its parent organization's constitution and by-laws and, as a condition of "functioning," is required to file a detailed written report indicating, among other things, the names of all of its officers, together with the salaries and all other remuneration paid each, the date of the regular election of such officers, the number of paid up members, a complete detailed and itemized financial statement of all receipts and disbursements for the previous year's period, a complete statement of all property owned, including funds on hand or credited to the organization, and to pay an annual fee of $2.00. The Supreme Court of Alabama defined the word "function" to mean the engaging in business by a labor organization "for the promotion of the interests of its members" (R. 336), and further stated

that the filing is a prerequisite to the ability of a labor organization to function at all (R. 334).[5]

In practical effect, the State of Alabama has said to the working people of that State, including the members of petitioner, Local Union #103, and petitioner B. E. Jones, as follows: You cannot assemble with your fellow workers into labor organizations for the purpose of discussing, disseminating information concerning, and taking action on, your economic problems; you cannot hold union meetings or discussions therein; you cannot engage in collective bargaining through unions of your own creation or choosing; you cannot, through or by means of such assemblages, petition your employer or the public or your government for redress of your grievances; in short, you cannot function in any respect whatsoever as and through a labor organization unless and until you comply with certain conditions and prerequisites that the State has prescribed, namely, that you, in effect, take out a license and pay a license fee as provided by Section 7.[6] Is such a requirement consistent with the guarantees of the First Amendment, or does it constitute a previous restraint upon the exercise by working people and petitioners of their right of assemblage, speech, press and petition? If, as has recently been reaffirmed by this Court, the right of assembly, petition, press

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[5] Under the law of Alabama labor organizations failing to comply with the provisions of the Bradford Act can be enjoined from functioning. *State* v. *Bynum*, 243 Ala. 138, 9 So. (2d) 134; *Try-Me Bottling Co.* v. *State*, 235 Ala. 207, 178 So. 231; *State* v. *Ellis*, 201 Ala. 295, 78 So. 71.

[6] It is important to note the difference between the method of enforcement adopted by the Federal government in respect to the filing of financial reports by labor organizations as required by the Revenue Act of 1943, Title I, Section 117(a), 58 Stat. 36, 26 U. S. C. Sec. 54(f), and the method adopted by the State of Alabama to enforce the Bradford Act. Instead of proscribing the very functioning of labor organizations, as does the Alabama Act, the Federal Act merely imposes a penalty upon those individuals responsible for the failure to file. (53 Stat. 28, 26 U. S. C. Sec. 54 (a)(b)(d) and 53 Stat. 62, 26 U. S. C. Sec. 145.)

and speech includes such assembly, petition, speech and press for economic as well as for religious and political purposes, the answer is clear: The State, in the absence of a clear and present danger to protectable interests, cannot thus previously restrict or restrain the otherwise peaceful exercise by working people of the right to assemble into labor organizations for economic ends. *Thomas* v. *Collins*, *supra*. Before discussing this case and other cases applicable to the issues presented here, it might be well briefly to consider the general nature and purpose of labor organizations, together with their traditional manner of functioning, in order to clarify and illuminate petitioners' basic contention, that, as a practical matter, rights are exercised in and through labor organizations which it is within the intendment of the First Amendment to protect as being indispensable to the functioning of a democracy.

2. The Functioning of Labor Organizations as Involving the Exercise of Civil Rights

Like all great movements, secular or religious, the trade union movement came into existence, and continues to exist, because it constituted and constitutes an indispenable means of fulfilling a deeply-rooted human need—specifically, the need of otherwise helpless individuals to obtain a measure of security in the means of their livelihood in an industrial society. Labor organizations give substance to inner desires and aspirations that have animated every grade and class of worker since the first days of working-class history. They are in truth the symbol of a recurrent hope and faith for economic justice and industrial democracy. In *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, this Court stated:

> "Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee

was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer."

Common knowledge and, more specifically, the record in this case (see in particular the testimony of William Green, President of the American Federation of Labor, (R. 244) and the testimony of W. O. Hare, Secretary-Treasurer of the Alabama State Federation of Labor, R. 227) indicate that in the first instance the formation, and thereafter the day-to-day functioning, of labor organizations, be they local, state or national in scope, comprise in substance the practical and effective exercise by the members of such organization of their rights of assembly, speech, press and petition. Thus, from the beginning there is a constant holding of meetings for the purpose of discussion of the economic problems confronting workers, a constant solicitation of new members both by paid representatives and by the ordinary membership, the constant carrying on of educational programs, the constant attempt by speech, handbill, letter or pamphlet to enlist the aid and sympathy of the public in the common struggle to protect and improve working standards, of the legislatures, both state and national, to obtain favorable or protective legislation, and the constant attempt to present requests, views and thoughts to employers through the process of collective bargaining—in general, a constant, common consultation, exchange of views, gathering and spreading of information, and dissemination of information and views to the employer, the general public and the legislatures. Assuredly, labor unions constitute assemblage, common con-

ference and action on a variety of subjects—political, legislative, economic, social, and educational, and the decisions of this Court clearly indicate that the association of working people into labor organizations involves the exercise of rights protected under the First Amendment.

3. Applicable Decisions Indicating Assembling Into and Functioning Through Labor Organizations Involves Exercise of Civil Rights

It was long ago determined by this Court that assemblage by any and all classes of persons into political organizations for purposes of taking political action was a right protected as a concomitant of the right of assemblage. *Whitney* v. *California*, 274 U. S. 357. In *Herndon* v. *Lowry*, 301 U. S. 242, the Court upheld the constitutional right "to address meetings and organize parties." *DeJonge* v. *Oregon*, 299 U. S. 353, like the *Herndon* case, turned on the right under the First Amendment of individuals to form and organize groups, to solicit membership and to engage in the general dissemination of information through the medium of those organized groups.

More recently, in *Hague* v. *C. I. O.*, 307 U. S. 496, this Court determined that the guarantee of free speech and assembly under the First Amendment extended to protection against attempts by the officers of Jersey City to prevent the labor organizations involved in that case "from holding meetings and disseminating information whether for the formation of labor organizations or for any other lawful purpose." In that case, indeed, the purpose of holding meetings in Jersey City, with which the city officials were enjoined from interfering, "was to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work and other terms and conditions of employment." The injunction was sustained be-

cause this right was one safeguarded under the First Amendment, protected against infringement by the State under the Fourteenth Amendment.

In *Thornhill* v. *Alabama*, 310 U. S. 88, this Court made clear that the functioning of labor organizations as the only practicable means of disseminating information concerning the nature and causes of labor disputes, and informing the public of conditions in industry, was indispensable to the proper functioning of a democracy in a modern industrial society. The Court there stated (at 102):

> "Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."
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> "Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society."
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>
> "It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants. See Mr. Justice Brandeis in 254 U. S. at 488. It does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. A contrary conclusion could be used to support abridgment of freedom of speech and of the press concerning almost every matter of importance to society.

> "The range of activities proscribed by Section 3448, whether characterized as picketing or loitering or otherwise, embraces nearly every practicable, effective means whereby those interested—including the employes directly affected—may enlighten the public on the nature and causes of a labor dispute. The safeguarding of these means is essential to the securing of an informed and educated public opinion with respect to a matter which is of public concern."

To proscribe the very functioning of labor organizations would proscribe the only practicable means available to employees to enlighten the public on the nature and causes of labor disputes and on conditions in industry.

In his opinion in *Murdock* v. *Pennsylvania*, 319 U. S. 105, Mr. Justice Jackson stated quite explicitly that

> "In my view the First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well."

Very recently, this Court, speaking through Mr. Justice Rutledge, indicated complete acquiescence in Mr. Justice Jackson's pronouncement and went on specifically to declare in respect to the right of workers to assemble, speak and petition for economic ends in and through labor organizations *(Thomas* v. *Collins, supra)*:

> "The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and free press are not confined to any field of human interest.
>
> "The idea is not sound therefore that the First Amendment's safeguards are wholly inapplicable to business or economic activity. And it does not resolve

where the line shall be drawn in a particular case merely to urge, as Texas does, that an organization for which the rights of free speech and free assembly are claimed is one 'engaged in business activities' or that the individual who leads it in exercising these rights receives compensation for doing so."

* * * * * * * *

". . . Necessarily correlative was the right of the union, its members and officials, whether residents or nonresidents of Texas and, if the latter, whether there for a single occasion or sojourning longer, to discuss with and inform the employees concerning matters involved in their choice. These rights of assembly and discussion are protected by the First Amendment."

* * * * * * * *

"Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. *And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others.*" (Emphasis supplied.)

See also as to the scope of the right of assembly generally, and as including the right of workers to form and function in unions, *State* v. *Butterworth*, 104 N. J. L. 549, 142 A. 57, 58 A. L. R. 744. See also the recent case of *American Federation of Labor* v. *Reilly, et al.*, No. 15446, decided by the Supreme Court of Colorado on December 21, 1944, wherein it was determined by that Court that a requirement that labor organizations incorporate as a condition precedent to operation in the State imposes a previous general restraint upon the rights of assemblage, press,

petition and speech. See, in addition, the very illuminating articles on the scope and nature of the right of assemblage by Professors Zechariah Chafee and Harold Laski in Volumes 2 and 6 of the Encyclopedia of Social Sciences, pp. 275 and 447, respectively.

4. The Limitations on the Power of the State to Legislate Where Exercise of Civil Rights Is Involved

From what has been said concerning the general nature and function of labor organizations, and from what this Court has indicated in the cases above cited, it would appear to be beyond argument that the bare right of workers to assemble into labor organizations is to be recognized as a right which is vital to the maintenance of our democratic institutions and which finds protection under the First Amendment. Trade unions, organized out of the very necessities of the situation and comprising a movement representative of the ideals and aspirations of workers the world over, are to be considered as essential to a free society. As such, the basic right of individual workers to assemble into and function through labor organizations can depend on no sufferance or good will of any government, but must be considered as having the same high standing under the Bill of Rights as the right of persons to assemble into political organizations for political purposes, or into religious organizations for religious purposes, or into scientific organizations for scientific purposes. Accordingly, the State cannot restrict or previously restrain the exercise of this right by working people, as by the requirement of a license or by the exaction of a fee for the privilege. *Lovell* v. *Griffin* 303 U. S. 44; *Schneider* v. *State*, 308 U. S. 147; *Murdock* v. *Pennsylvania, supra; Thomas* v. *Collins, supra.*

Indeed, in the recently decided *Thomas* case it was stated by a majority of this Court that the exercise of the bare right of assembly or speech cannot be subject to any state-

imposed condition, such as, for instance, the requirement of registration for purposes of identification, a requirement which, as pointed out by the dissenting opinion, had been permitted in other cases where the right to license would have been denied. Cf. *Cox* v. *New Hampshire*, 312 U. S. 569; *Manchester* v. *Leiby*, 117 Fed. (2d) 661.

a. *The Requirements of Section 7 as Constituting the Equivalent of a License.*

However, there is here involved a requirement which far exceeds any requirement of registration; Section 7 in fact and in effect constitutes a license imposed by the State of Alabama on the exercise of civil rights, an assertion of power which all members of this Court have agreed is improper. *Schneider* v. *State, supra; Cantwell* v. *Connecticut*, 310 U. S. 296. That the requirement under Section 7 of the filing of a detailed statement by labor organizations as a condition precedent to their authority to function in the State, which statement must show the names and remunerations of officers, dates of elections, number of members, amount of assets and liabilities, including a complete financial statement of all dues, fees, fines and assessments levied, together with an itemized list of all disbursements, constitutes the equivalent of the requirement of a license, has been determined by this Court in the case of *International Text Book* v. *Pigg*, 217 U. S. 106.[1] In that case the State of Kansas had required compliance with similar pre equisites by certain types of corporations as a condition of doing

[1] It should be noted that the *Pigg* case is here cited as authority solely for the proposition that the requirements of Section 7 are tantamount to the exaction of a license. Accordingly, the attempt by the Alabama Supreme Court (R. 338) to distinguish the case on the ground that it involved a license of the right to engage in interstate commerce, rather than of the right to assemble or speak, is fallacious. Further, and in any event, the case clearly stands as authority for the proposition that no Federally granted right can be licensed by the State.

business in the State. The filing requirement involved in that case is described by the Supreme Court in words which clearly indicate its similarity to the type of statement required under the present law:

> "In the first place, it is made a condition precedent to the authority of a corporation of another state, except banking, insurance, and railroad associations, to do business in Kansas that it shall prepare, deliver and file with the Secretary of State a detailed statement, showing the amount of the authorized, paid-up par and market value of its capital stock, its assets and liabilities, a list of its stockholders, with their respective postoffice addresses and the shares held and paid for by each, and the names and postoffice addresses of the officers, trustees, or directors and managers."

Analyzing this requirement, the Court concluded that it was in effect a licensing requirement:

> "It is true that the statute does not, in terms, require the corporation of another state engaged in interstate commerce to take out what is technically a 'license' to transact its business in Kansas. But it denies all authority to do business in Kansas unless the corporation makes, delivers and files a 'statement' of the kind mentioned in Section 1283. The effect of such requirement is practically the same as if a formal license was required as a condition precedent to the right to do such business. In either case it imposes a condition upon a corporation of another state seeking to do business in Kansas, which, in the case of interstate business, is a regulation of interstate commerce and directly burden such commerce."

See also *Crutch* v. *Kentucky*, 141 U. S. 47.

An equally important restraint imposed by Section 7 upon the functioning of labor organizations is the exaction of an annual fee which, although nominal in amount, is exacted solely as a license or permit fee or fee on the

very right to function. *Murdock* v. *Pennsylvania, supra*, involved a similar tax, nominal in amount, imposed upon the exercise of constitutional rights. There, as here, the tax was in no way apportioned or in any way related to the scope of activities of the organizations involved or their realized revenues. There, as here, the tax was a flat tax "levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment."

It is no defense of the statute to claim that the fee is not excessive or that the State will not deny the license on request. The assertion of the power to grant a license implies the assertion of the power to withhold it. If the State may insist that the rights of free speech, press and assembly can be exercised only on certain terms which go beyond the limits of the constitutional protection, it may insist on prohibiting the enjoyment of those rights altogether. The degree of burden is not the determining factor; it is the power which is asserted that is non-existent. *Grosjean* v. *American Press Company*, 297 U. S. 233. Even if the license might be secured for the asking, this would constitute no answer. *Thornhill* v. *Alabama, supra.*

b. *The Area of Allowable Control in Field of Civil Rights as Distinguished from Field of Commercial Activity. The Distinction Between Restraint of Civil Rights and Prevention of Abuses.*

The Supreme Court of Alabama, in upholding Section 7 as against the foregoing argument, commented as follows:

> "If we follow the argument of counsel for plaintiff to its ultimate conclusion, it is difficult to see where any effective legislation could be had concerning regulations of organizations of this character. We think the

authorities which we have herein cited clearly demonstrate that they are subject to the police power of the state, and that the contention as to the violation of the constitutional provisions of free speech and assembly invalidates any of the provisions of the Act, is untenable."

The courts of two other states, before whom the constitutionality of similar legislation had been argued, expressed a similar concern in respect to the scope of the so-called "civil rights" argument. See *Thomas* v. *Collins*, 174 S. W. (2d) 958 (Texas), and *Hill* v. *State*, decided by the Supreme Court of Florida on November 28, 1944 (C. C. H., p. 67,040). The apprehension thus expressed is not warranted. However, having been expressed by three high judicial bodies, there is perhaps a need for greater explicitness in presentation of the argument. We do not suggest that Local #103 or any other labor organization in the State of Alabama is beyond regulation or in any way "above the law." We do contend that the right of petitioner Jones and the other members of Local #103 to assemble with their fellow workers in a labor organization cannot be previously restrained—that this right has a higher standing under the Federal Constitution than the right of individuals to form or join a business corporation or similar concern conducted for commercial purposes. This is on the basis of the principle enumerated by this Court in *Murdock* v. *Pennsylvania*, *supra*:

"The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills."

See also *Follett* v. *Town of McCormick*, 64 S. Ct. 717; *Valentine* v. *Chrestensen*, 316 U. S. 52.

Underlying all of the cases passing on the constitutionality of state interference with free speech, press or assembly is the basic distinction between the standards of constitutionality applied to legislation affecting rights related to property or to commercial enterprises and legislation related to the fundamental freedoms essential to our democracy. This distinction is best expressed in the words of this Court in *West Virginia* v. *Barnette*, 319 U. S. 624:

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction to prevent grave and immediate danger to interests which the State may lawfully protect."

In *Thomas* v. *Collins*, *supra*, this Court again referred to the "preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." The history of the trade union movement

has shown that the freedom of working persons to assemble and associate together for economic ends is as essential to our democratic process as the right of other persons to assemble into political organizations for political purposes, or into other societies for religious or scientific or educational ends. As the cases make clear, the power of the State to abridge this right cannot be judged on the same basis as is judged the power of the State to abridge the right of persons to associate together into business organizations for commercial purposes; accordingly, the analogy pointed by the Alabama Court and the Courts of Alabama, Florida and Texas to the accepted right of the State to license or otherwise condition the existence of business corporations or other forms of organized commercial activity is a false one. The formation and functioning of a meat packing company, of an ice plant, of a public utility, does not comprise, or is not a concomitant of, assemblage and speech in a domain "indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society"; "the dissemination of information concerning the facts of a labor dispute," and "free discussion concerning the conditions in industry and the causes of labor disputes," in and through a labor organization as the only "practicable, effective means whereby those interested—including employees directly affected—may enlighten the public on the nature and causes of a labor dispute" does comprise, and is such concomitant of, assemblage and speech in such a domain. *Thornhill* v. *Alabama*, *supra*, 310 U. S. at 102, 103; *Thomas* v. *Collins*, *supra*.

Section 7, it is to be recalled, forbids under criminal penalties, except upon state-imposed conditions, each and every element of the functioning of labor organizations, including the holding of meetings and discussion and dissemina-

tion of information concerning economic problems of working people in and through such meetings:

> "If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of *requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order.*" (Emphasis supplied.) (*Thomas* v. *Collins, supra.*)

Section 7, it should further be noted, has nothing to do with the prevention of abuses. Any labor organization, regardless of its purposes, manner of operation, or conduct in respect to the public, is free to function in the State if it files the statement in question.

Let us repeat, the argument advanced by petitioners in no way subordinates the right of the State to deal with whatever abuses are or may be incident to the assemblage of working people into labor unions. If there is fraud or violence or any other specific conduct inimical to the interests of the public, such conduct can, of course, be made unlawful. In so far as a union or its members engage in any activity which can properly be considered criminal, they are today subject to the provisions of the criminal law. Laws may be passed to curb specific criminal conduct but not to curb the very exercise of the right of speech or assembly. It is this consideration which constitutes one of the cornerstones of American traditions of free speech and free assemblage. As this Court has pointed out (*DeJonge* v. *Oregon*, 299 U. S. 353):

> "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by

dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

See also *Thomas* v. *Collins, supra.*

B. Section 16

All of the foregoing arguments made in reference to Section 7 are applicable to petitioners' contention that Section 16 is unconstitutional. Section 16, which makes it unlawful for any "executive, administrative, professional or supervisory employee to be a member in, or to be accepted for membership by, any labor organization," even more clearly operates to deny a certain class of working people their right to assemble, speak, and petition in and through labor organizations. Included in this class is petitioner Jones whom the record shows to be a supervisory or administrative employee. Whereas Section 7 might be said merely to restrain the exercise of civil rights, Section 16 constitutes an outright prohibition on the exercise of such rights.[8]

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[8] It should be noted that Section 16 prohibits any supervisory or administrative employee from being a member in any labor organization only if that organization also permits membership to employees other than supervisory or administrative employees, or if it is affiliated with any labor organization permitting membership to non-supervisory or administrative employees. However, since both the American Federation of Labor and the Congress of Industrial Organizations admit non-supervisory or administrative employees into membership, and since the vast majority of labor organizations are affiliated with one or the other of these two organizations, the choice of organization remaining to administrative or supervisory employees is so limited as to leave that choice an empty one.

As seen by one of petitioners' exhibits (R. 268) and by the testimony (R. 240), numerous labor organizations have traditionally enrolled supervisory or administrative employees into membership along with non-supervisory or administrative employees, and many classes of administrative and supervisory employees have traditionally sought and obtained membership in such labor organizations for their mutual aid and protection. The history of the labor movement clearly indicates that the need of this class of employees for the protection afforded by labor organizations is as great as that of any other class of employees. The right thus to assemble into an organization for economic ends is as inviolable as the right of other persons to assemble into organizations for religious or political purposes. The right is open to all and cannot be abridged for reasons of race, creed, color, social position or, as in the present case, hierarchy of employment. Consideration by the assemblage itself of whether the purposes of the assemblage can be accomplished by admitting certain classes of supervisory employees has in the past served to eliminate those categories whose presence in the assemblage would defeat its purposes, and in the future must necessarily continue to determine the question of exclusion or inclusion if freedom of assemblage is to have any content or any meaning. As stated in *Schneider* v. *State*, *supra:*

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

It could hardly be asserted that the State has the right to prohibit membership in religious organizations because of political or social beliefs or in political organizations because of color. See *Nixon* v. *Herndon*, 273 U. S. 536, and

Nixon v. *Condon*, 286 U. S. 73. It is no less a denial of a right fundamental to our society to prohibit the petitioner Jones or other supervisory employees who are members of Local Union #103 from joining and assembling with their fellow workers in an organization in which they have held membership for years, and which desires to continue them in membership. Denial of this right cannot find justification in legislative beliefs as to the greater or lesser desirability that the right be exercised by certain classes of persons.

C. Conclusion

The importance of the issues above discussed cannot be overstated. The future pattern, indeed the continued existence, of the entire trade union movement as an effective instrument in dealing with and solving the problems of our present-day industrial society might well be involved. Implicit in the challenged legislation is the assertion by the State of the right to withhold or condition as it sees fit the right of individuals to assemble into and function in and through labor organizations. What Alabama has attempted under Section 7 differs only in degree from the compulsory incorporation requirements of the so called "Labor Peace Act" of the State of Colorado (Senate Bill 183, Laws of 1943) recently struck down as an invasion of the rights of speech and assembly by the Supreme Court of that State, and the Colorado Act differed only in degree from legislation completely assimilating labor organizations into a corporate state on the Fascist model. It is the great purpose and function of the Bill of Rights to safeguard "the processes of popular government, to shape the destiny of modern industrial society" (*Thornhill* v. *Alabama*, *supra*)—to safeguard such processes even as against the slightest of restraints:

> "There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may

exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty." *(Thomas* v. *Collins, supra.)*

III

SECTIONS 7, 15 AND 16 CONSTITUTE AN ARBITRARY AND UNREASONABLE EXERCISE OF THE STATE POLICE POWER IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

A. General Considerations

Sections 7 and 16, discussed in the preceding section of this brief, and, in addition, Section 15, violate the Federal Constitution in additional respects. The requirements contained therein are arbitrary and unreasonable, and without rational basis; they deprive petitioners, in particular petitioner Local Union #103, of rights and liberties protected under the due process of law clause of the Fourteenth Amendment. We appreciate that the burden assumed in thus challenging the enactments as an unreasonable exercise of the State's police power is a heavy one. *Nebbia* v. *New York*, 291 U. S. 502. It is submitted, however, that the interference with the orderly, peaceful and traditional functionings of voluntary associations of working people accomplished by the requirements of Sections 7, 15 and 16 are disproportionately burdensome, are entirely unjustified, and serve no compelling public purpose—that reasonable men, viewing the requirements in the

light of existing circumstances, and with a knowledge of the purpose and role of labor organizations in our modern industrial society, must and would agree that the law is arbitrary in the extreme and without rational basis. If this can be said to be true, then it is the function and the duty of this Court to declare the law invalid. *Mugler* v. *Kansas*, 123 U. S. 623.

In determining whether any particular legislative enactment is lacking in rational basis, this Court is guided by somewhat less vague or inarticulate premises than the broad phrases of the Fourteenth Amendment or the indefinite tests of arbitrariness or unreasonableness. The problem is a severely practical one, dependent upon the facts and circumstances of each individual case. "Legislation cannot be judged by theoretical standards. It must be tested by the concrete conditions which induce it." McKenna, J., in *Mutual Loan Co.* v. *Martell*, 222 U. S. 225, at 233. Examination into such facts and circumstances as a means of forming a basis for adequate judgment as to reasonableness is a necessary preliminary to such judgment if the exercise by the State of its police power is not to become a bootstrap proposition. The necessity for a factual showing of a lack of need for particular legislation as a basis for adjudging whether such legislation is an unnecessary or excessive exercise of State police power has very recently been commented upon by the dissenting Justices in *Thomas* v. *Collins*, *supra*, when they stated:

> "Since its requirements are not obviously burdensome, we cannot void the statute as an unnecessary or excessive exercise of the State's police power on any *a priori* reasoning. The State Supreme Court has found that conditions exist in Texas which justify and require such identification of paid organizers as the law prescribes. There is not a word of evidence in the record to contradict these conclusions. *In the absence*

> *of a showing against the need for the statute* this court ought not incontinently to reject the State's considered views of policy." (Emphasis supplied.)

Accordingly, in determining whether any particular legislation has rational basis, this Court has made the following inquiries:

> *What is the type of activity involved—is it inherently evil, or is it dedicated to a public use as in the case of a utility, or is it a useful or socially necessary activity? Do circumstances or economic conditions exist which require the intervention of the State? Is there in fact a danger to the health, safety or well-being of members of the State in the existing situation? Will the method adopted by the State guard against it? Is the burden on the individual too heavy to justify the restriction? Are the means adopted by the State reasonably related or relevant to the objectives sought, or do they impose hardships in disproportion to the benefits which the State seeks to confer? Is it possible to secure the objects sought without impairing essential rights and principles? And finally, are the interests of the public generally, as distinguished from those of a particular class, such as to require the interference of the state?*[9]

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[9] This method of approach by inquiry into facts and circumstances and into specific economic conditions, termed "sociological jurisprudence" by Dean Pound, has been described and commented upon in important law review articles. See "Hours of Labor and Realism in Constitutional Law" by Felix Frankfurter, 29 Har. Law Rev. 353; "Judicial Determination of Questions of Fact Affecting the Constitutional Validity of Legislative Action" by Henry Wolf Bikle, 38 Har. Law Rev. 6; "Due Process of Law, Police Power and the Supreme Court" by Ray A. Brown, 40 Har. Law Rev. 943; "Police Power—Legislation for Health and Personal Safety" by Ray A. Brown, 42 Har. Law Rev. 866. See also *Nebbia v. New York, supra,* where the Court stated:

> "• • • the function of courts in the application of the Fifth and Fourteenth Amendments is *to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory.*" (291 U. S. at 536.)

What are the factual or economic circumstances which justify the attempted regulations or prohibitions contained under Sections 7, 15 and 16? In the first place, it is significant that, at least in so far as could be ascertained in the hearings herein (R. 296) or as far as the Alabama Legislature records disclose,[10] the Alabama Legislature undertook no legislative investigation under which the facts in respect to the operations of labor organizations within the State

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"It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, *because the reasonableness of each regulation depends upon the relevant facts.*" (291 U. S. at 525.) (Emphasis supplied.)

See also *Muller* v. *Oregon*, 208 U. S. 412, 419-420; *McLean* v. *Arkansas*, 211 U. S. 539, 548-51; *Price* v. *Illinois*, 238 U. S. 446, 453; *Bunting* v. *Oregon*, 243 U. S. 426, 439; *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242, 245, for instances of the Court's reliance upon specific circumstances and economic conditions as serving to justify the challenged legislation. Justice Brandeis, in particular, in his great dissents in cases involving economic legislation such as minimum wage laws, relied either upon legislative findings or upon sociological data to support his conclusion that the particular legislation found justification and rational basis in the existing economic circumstances and conditions. See his dissents in *Adams* v. *Tanner*, 244 U. S. 590; *J. Burns Baking Co.* v. *Bryan*, 264 U. S. 504; *Truex* v. *Corrigan*, 257 U. S. 311.

See also *Borden's Farm Products* v. *Baldwin*, 283 U. S. 194, where the Court emphasized the "importance of adequate findings of fact in relation to controlling economic conditions."

In the following cases it was held that the due process clause forbids legislation which restricts individual or group rights more severely than advantages to the community can possibly justify; *Chicago, Burlington & Quincy Railway Co.* v. *People of the State of Illinois*, 200 U. S. 561; *Caroline W. Dobbins* v. *City of Los Angeles*, 195 U. S. 223; *Henning Jacobson* v. *Commonwealth of Massachusetts*, 197 U. S. 11; *W. T. Price* v. *People of the State of Illinois*, 238 U. S. 446. In *Liggett* v. *Baldridge*, 278 U. S. 105, the Court declared that in passing upon the reasonableness of any regulation the Court must consider the degree of danger to public interest, the economic and social demands fulfilled by the activity regulated, and the possibility of accomplishing the desired result by less drastic measures.

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[10] House Journal, Alabama Legislature, Session 1943, pages 1302, 1407, 1489, 1503, 1551.

Senate Journal, Alabama Legislature, Session 1943, pages 674, 698, 871, 1066, 1271, 1294, 1683.

and their effect upon the public could be ascertained, and such Legislature made no findings of any conditions which might afford a rational basis for the various requirements imposed. In the *Nebbia* case, *supra*, and in similar cases findings of state legislative investigatory bodies were heavily relied upon by this Court in affording justification for the particular regulations. See *Wolf Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522.

In the present case the record affirmatively discloses that no particular abuses existed which reasonably would require legislative interference in respect to the matters restricted under Sections 7, 15 and 16 of the Bradford Act, and that there are no existing conditions in respect to the subject matter of the legislation which could serve to afford a rational basis for the various requirements. As will be seen, the presumption that such circumstances exist has been amply rebutted by the record herein.

B. Section 7

Thus, for instance, in regard to Section 7 the State did not and could not rely upon any existing, abusive conditions or practices in respect to union financial matters. On the contrary, the evidence affirmatively and specifically showed that unions operating in the State regularly made full financial accounting to their membership (R. 236, 238).[11] Neither

[11] It is undisputed that (R. 238)

"With respect to the income, expenditures, assets and liabilities of all labor organizations affiliated with the A. F. of L. operating in Alabama, it is the practice to make regular accountings of all such financial matters to the members, either at regular monthly meetings or by quarterly audit of the books and records by duly elected trustees or by auditing committees. That a number of such organizations regularly publish financial statements. That in cases where such statements are not published, such statements are orally read at regular meetings or are prepared by a duly elected auditing committee. That

did the State rely upon or claim any monopoly upon the supply of labor by labor organizations within the State as a justification for the public filing of financial statements. While the State, of course, has the power to anticipate evils or abuses, this power of anticipation must be premised upon actual conditions which give a reasonable basis for the apprehension and cannot be predicated upon "any fanciful conjecture." *Borden's Farm Products* v. *Baldwin*, 283 U. S. 194.

It is submitted further that Section 7 would burden unions out of all proportions to any public benefit that Section 7 might bestow. Under Section 7 extremely detailed and complicated financial accounts are required to be rendered to the State, including itemization of all receipts and of each and every disbursement with date, purpose and amount thereof and name of each recipient.[12] Such a statement far exceeds that required of insurance companies or utilities or any other form of business enterprise operating in the State. In order to be assured that they would not be penalized in the sum of $1,000 for a possible violation of Section 7 (as set forth under Section 18), it would be necessary for each union, regardless of its size or finances, to hire, if not certified public accountants, at least persons with a better knowledge of accounting practices and procedures than that possessed by working men and women who, as in the large majority of cases, have, without compensation, assumed the job of president or secretary or treasurer of a local union in the past. The possibility of criminal penalties for fail-

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all officers and representatives of such labor organizations having anything to do with the finances of the organization are bonded. That all expenditures of any of the funds of any such labor organization are submitted to a vote of the membership for approval either before or after such expenditures are made."

[12] See Form of Report on R. 292.

ure to properly make the reports would operate and has operated to discourage many otherwise available workers from accepting union positions (R. 316).

It is to be noted that the State does not require that this extremely detailed financial report be submitted to members of labor organizations, who, as the persons directly involved and directly participating, presumably would be the persons most interested; instead, the information is to be made available only to the Governor. It may be inquired, just what compelling reasons are there for such a requirement? The State is not here dealing with an enterprise in which the public is solicited or is required to invest its funds; on the contrary, the State is dealing with a private, voluntary association whose internal affairs the courts have universally held to be the concern solely of its membership. See Dangel & Shriber, "Labor Unions", Section 280, p. 304. Not only does the record fail to show any occasion for departure from this established rule, but on the contrary the record shows affirmatively no possible basis for state intrusion in the manner here attempted.

C. Section 15

Similar considerations are applicable to Section 15 which proscribes the collecting or receiving by labor organizations of any fee or sum of money (other than initiation fees or dues) as a "work permit" (assuming this an identifiable term). The State can point to no prevailing abusive conditions in respect to the collection by unions of anything which could be classified as "work permits." On the contrary, the collection under certain conditions of sums of money, although not as initiation fees or dues, constitutes a practice traditionally adopted in union constitutions and by-laws and was shown by the evi-

dence to be indispensable to the proper functioning of labor organizations (R. 16, 20).

Section 15, it should be observed, constitutes a blanket and unconditional prohibition upon the collection of all fees which are not initiation fees or dues if employment is contingent upon the payment of such fees. Section 15 is not designed merely to prevent the fraudulent or arbitrary collection of fees or the collection of fees in excessive amount and without relation to any benefits received by the person paying the fee. It does not concern itself with the amount of the fee, or its purpose. It is not narrowly drawn to proscribe any particular abuse. It is a catch-all proscription.[13]

Such unconditional prohibition operates directly, and unequivocally, and entirely without reason, to outlaw the collection of fees other than dues or initiation fees in situations where, virtually since their organization 50 and even 80 years ago, labor organizations, particularly in the building and metal trades industries, have required working fees as a condition to employment under union shop agreements gained by such organizations—situations where the practice is not only a reasonable and necessary one in terms of the ability of the organization to function for the best interests of its members, but also in terms of benefit to the public. Thus, Section 15 makes it a crime for labor organizations to engage in such accepted and traditional practices as the following: The collection of nominal fees from non-member apprentices in return for which apprentices receive the guidance and teaching of the journeymen

[13] This is clear from the broad construction given the section by the Alabama Court (R. 349):

> "This section was directed towards the practice whereby a person seeking a job is required to obtain a permit or a certificate by the payment of a sum of money to some organization before being permitted to exercise his right to work."

members of the union with whom they are employed, and the protection of the collective bargaining agreement that has been obtained through the efforts and sacrifices of the journeymen members in whose trade they are apprenticing; the charging of fees to non-member temporary workers (who do not desire to join a union and pay its initiation fees) for permission, during the limited period in which they desire employment, to work under the highly beneficial terms of an all-union contract without assuming the obligations of union membership; and the requiring of the payment of a fee as a condition of working under an all-union contract in the case of a transfer from one local union to another during the period necessary for the local to investigate the record, the capacity and integrity of the person applying for the transfer before he is admitted to membership. No complaint has ever been directed against these particular practices, and they are accepted and recognized in every community where labor organizations function under union shop agreements. The practices are designed to protect the membership and the public at large from imposition, and to afford non-members the opportunity to work under and receive the full benefits of existing union shop agreements—agreements that have often been obtained only after years of sacrifice and struggle on the part of the union membership. To deprive labor organizations of the right to require the payment of reasonable fees in such circumstances could operate only to the detriment of the organization and of the public.

These requirements in respect to work permit fees are contained in union constitutions and by-laws and were mutually agreed to only after experience had demonstrated the wisdom and necessity for the inclusion of such provisions. It is impossible to conceive any rational basis whatsoever for the outlawing of such a reasonable requirement as is contained, for instance, in Section 46, par.

(c), of the constitution of petitioner, United Brotherhood of Carpenters & Joiners of America, under which constitution the petitioner Local Union #103 operates. Section 46(c) requires simply that:

> "A member who desires to work in another jurisdiction from which he would return home daily, or who does not desire to transfer his membership, shall, before going to work, secure a Working Permit in writing from the Local Union or District Council in whose jurisdiction he may go to work. He shall pay for such Working Permit a charge of not less than Seventy-five Cents (75¢) per month, and if less than two years a member he shall pay any difference in initiation fee, and shall be subject to all local assessment levied exclusively for direct trade purposes by and for the use of the Local Union or District Council." (R. 20, 71.)

The fee required under Section 46(c) is entirely reasonable. The section relates solely to the internal affairs of the Carpenters Union; it obviously works for the benefit of the members of the Carpenters Union, and can do no possible harm to the general public.

The Supreme Court of Alabama has declared in the present case that in Alabama the constitutions, rules and by-laws of labor organizations "constitute not only the contract between the labor union and the members, but also the contract between the members and other members of the union" (R. 338). Article I, Section 10, of the Federal Constitution provides that no State shall pass any law impairing the obligation of contracts; this specific prohibition can be disregarded only when it is demonstrably required in the public interest. *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398; *Treigle* v. *Acme Homestead Association*, 297 U. S. 189. In the latter case this Court pointed out that even though an activity might be such as materially to affect the public, for instance, as in the case of a public utility, or, as claimed by the Attorney General,

in respect to labor organizations, this afforded no basis for regulation which was not in fact for the benefit of the public and which was not in fact occasioned by public necessity. The Court stated, 297 U. S. at 197:

> "The appellee bases its entire argument in support of the challenged enactment upon the proposition that, as building and loan associations are incorporated for a quasi-public purpose, the state has a peculiar interest and a concomitant power of supervision and regulation to prevent injury and loss to their members; and it is said that this court affirmed the principle in Hopkins Federal Sav. & L. Asso. v. Cleary [296 U. S. 315, ante, 251, 56 S. Ct. 235, 100 A.L.R. 1403]. We have no disposition to qualify what was there said. We recognize that these associations, like banks and public service companies, are subject to a degree of regulation which would be unnecessary and unreasonable in the case of a purely private corporation. But laws touching building and loan associations, like those affecting banks or utility companies, must be confined to purposes reasonably connected with the public interest as distinguished from purely private rights. The legislature has no greater power to interfere with the private contracts of such corporations, or the vested rights of their stockholders as such, under the pretext of public necessity, than it would have to attempt the same ends in the case of a private corporation. Though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive."

Section 15, as well as Section 16 next discussed, deals only with private rights; the requirements of these sections can find no basis in public necessity and afford no public benefit. Surely, it is unreasonable in the ex-

treme to invalidate obligations such as are contained in 46(c) of the constitution of the Carpenters Union, to nullify the obligations of union shop agreements, and to outlaw traditional union practices, by imposing blanket prohibitions against the collection of any and all fees which might come under the general category of "work permit" fees, as is done by Section 15. Since the State cannot and does not attempt to point to any abusive conditions as justification for the prohibition contained in Section 15, it is submitted that there is no public interest to be served by the blanket prohibition of the collection of any and all work permit fees that is in any way commensurate with the harm done to labor organizations in outlawing these traditional practices concerning which there has been no complaint, and that such prohibition contained in Section 15, striking down such traditional practices, arbitrarily deprives of rights of liberty and property in violation of the Fourteenth Amendment, and of existing contract rights in violation of Article I, Section 10, of the Constitution.

D. Section 16

Finally, in respect to Section 16 there is likewise a complete lack of rational basis for the prohibition against so-called "supervisory" or "administrative" employees (assuming these are identifiable classes) joining labor organizations which likewise take into membership non-supervisory or non-administrative employees, or for the prohibition against such labor organizations taking into membership such employees. Here again, as in respect to Section 15, the State has imposed a flat and unconditional proscription applicable under any and all circumstances to any and all categories of supervisory or administrative employees, at least in so far as they might wish to join any labor organization affiliated with the American Federation of Labor or the Congress of Industrial Organizations.

The State can point to no abusive conditions which have arisen because of the fact that supervisory or administrative employees are members of labor organizations, and the evidence affirmatively shows that such practice has resulted in no harm to the public, but that, on the contrary, such practice is necessary to the proper functioning of labor organizations within the State (R. 22, 302).

Even if we were to venture into the realm of speculation, any harm or abuse that might arise from the traditional practice of accepting certain classes of supervisory employees into membership could reasonably involve only a single class—that of employers—and not the public generally. Assuming that the employers were adversely affected by the practice (the record indicates to the contrary (R. 240)), the State could not, consistent with the equal protection of the laws clause of the Fourteenth Amendment, interpose itself solely on their behalf in the absence of a showing that the public generally was also adversely affected. It is submitted that any disabilities which might be suffered by employers because of the practice are more than outweighed by the disabilities which would be suffered by supervisory or administrative employees if they were denied the right to continue membership in labor organizations, or if labor organizations were denied the right to continue to include supervisory employees as members. (See R. 241.)

Petitioners have introduced as part of the record a recent bulletin prepared by the Bureau of Labor Statistics of the United States Department of Labor (R. 269), which describes the long history and practice on the part of labor organizations, particularly in the printing, building and metal trades, to include in membership certain classes of supervisory employees, the reasons for such practice, and the effect of such practice on industry generally (R. 269). This survey, together with the testimony of witnesses

familiar with conditions within the State of Alabama (R. 240), indicates conclusively that the practice is a traditional and well established one, that there have been few, if any, complaints concerning the practice, that the practice is of benefit to supervisory employees, union membership generally, and the general public, and that the practice has increased in recent years, with no resulting harm either to management or to the public. This study and the testimony shows that there are some 29 large International Unions whose constitutions permit, and in some cases require, membership of foremen in the same unions as production workers, and that this practice has been in effect since 1889.[14]

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[14] Since the printing trades has perhaps the longest history of including both foremen and production workers in the same organization, the report of the Bureau of Labor Statistics in regard to this industry is of particular significance. The report states:

"In both newspaper and book and job printing, which membership of foremen under the closed-shop agreements, has been required since 1889. The practice is so thoroughly established that it now appears to be accepted as a matter of course. Contracts provide wage scales for foremen, and include foremen under other provisions. Foremen continue to have a voice and vote in the union, although they tend to become inactive members. Recent studies reveal:

"'In early years, many publishers were strongly opposed to having their representatives owe allegiance to the union. As contracts became more inclusive, however, and rights of both employers and unions more clearly defined, publishers in general ceased to object. They are now chiefly concerned lest foremen should be subject to union discipline for differing with the local union in the interpretation of the terms of a contract. The internationals generally recognize the justice of the publishers' position and a method is provided for the joint settlement of such disputes. The unions do not, however, forego their right to discipline foremen for their disobeying laws relating to internal union matters, or for deliberately disregarding union rules. Although there is still occasional complaint that some locals attempt, by disciplining foremen, to enforce conditions not provided for in contracts, the practice is not so common as to constitute a major issue . . .

"'The foremen represents the employer in dealing with grievances arising in his department. He settles many day-to-day grievances

Surely, the prohibition against supervisory employees joining, or being accepted into membership by, labor organizations whose constitutions require or permit such class of employees to become members, such as, for instance, petitioner Brotherhood of Carpenters (R. 66), is an arbitrary destruction of the obligations of existing agreements contrary to Article I, Section 10, of the Federal Constitution, and surely the attempt to prescribe what persons shall or shall not be eligible to membership is an arbitrary interference with the internal affairs of a voluntary association. Labor associations, as voluntary associations, should be permitted to determine for themselves, unless there are very compelling reasons to the contrary, whether the purposes of their organization can best be accomplished by admitting or denying various classes of supervisory employees membership. For all that the State has submitted in support of the prohibition of Section 15, the State might as well undertake to limit membership in scientific societies by reference to the degree of education achieved, in political groups by reference to the degree of participation in particular elec-

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and complaints with the chapel, (local) chairman, without recourse to the joint standing committee or to arbitration.

"'In book and job printing the union membership of foremen is so thoroughly established that it does not become an issue except occasionally in a newly organized plant. It is clearly recognized that the foreman's first responsibility is to management.

"'His duty to the union is to administer the agreement fairly in the plant. There are advantages in this system in that the foreman, necessarily a skilled man himself, is thoroughly acquainted with the problems of the men and with the union agreement and rules. He is in good position, therefore, to interpret the union's position to management, and vice versa. However, the fact that he may be disciplined by the union, if the union considers that he has violated the agreement or a union rule is a source of difficulty in some cases. Fear of union discipline sometimes interferes with a foreman's efficiency, although the strong foreman is little affected. There is in some cases a need for more thorough protection of foremen from union discipline for carrying out office orders, pending determination of an issue through the negotiation or arbitration machinery.'"

tion campaigns, or in employer associations by reference to membership in the National Association of Manufacturers. Indeed, there would be little or no limit to the extent to which the State could interject itself into the internal affairs of voluntary associations and to deprive such voluntary associations of the most fundamental of their rights—that of determining which persons will or will not be taken into membership.

It is an equally arbitrary interference with the liberties of individuals to deny supervisory employees the right to join labor organizations of their own choosing. As well might the State undertake to tell persons of a certain religious belief that they cannot join the American Legion, or persons of a particular political belief that they cannot join a scientific society. Unless there exists some specific indication that the traditional practice of permitting supervisory or administrative employees to join labor organizations has resulted in any detriment to the public, or could possibly result in any detriment to the public, it is submitted that the prohibition against such practice is unreasonable and without rational basis, and is accordingly in violation of the Fourteenth Amendment.

IV

SECTIONS 7, 15 and 16 DENY PETITIONER EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTEENTH AMENDMENT.

The Bradford Act is directed at one segment of the general public, namely, members of labor organizations. The declaration of policy states that "the activities of labor organizations affect the social and economic conditions of the State and the welfare of its citizens." The purpose of the Bradford Act in so far as Sections 7, 15 and 16 are concerned is stated in such declaration of pol-

icy to be "to regulate the activities and affairs of labor organizations, their officers, agents, and other representatives in the manner and to the extent hereinafter provided."

By means of an exception inserted in the definition of "labor organizations" in Section 2 of the Act, there is excepted from the general class of labor organizations "any labor organization or labor union the members of which are subject to the Act of Congress known as the Railway Labor Act."

It is asserted by petitioners, and particularly petitioner Local Union #103, that Sections 7, 15 and 16, applicable as they are only to one class of voluntary associations, are discriminatory, and further, that such section, applicable only to petitioners and not to other classes of similarly situated labor organizations, deny such petitioners equal protection of the laws.

In making classifications and imposing limitations upon particular groups, the Fourteenth Amendment requires that the State act on the basis of a reasonable relationship to the object sought and not on the basis of any arbitrary and unreasonable classification, and all within a class must be treated equally. *Frost* v. *Corporation Commission*, 278 U. S. 515; *Southern Railway* v. *Green*, 216 U. S. 400. As in the case of all challenges to the exercise by the State of its police power, the sole question which concerns this Court is whether there is any rational basis for the challenged classification. Here again, the test is an eminently practical one, and the determination can be made only by factual appraisal of existing economic circumstances and conditions, with particular regard to the relevance of the exclusion to the objectives sought. See *Borden Farm Products* v. *Baldwin*, supra; *United States* v. *Carolene Products Co.*, 304 U. S. 144.

In so far as Section 7 is concerned, it is subject to the general objection that it discriminates as between labor organizations and all other types of enterprise in general and employer or trade associations in particular. Business corporations or public utilities chartered and licensed by the State are not required to make equivalent detailed financial disclosures, although the public is invited to invest its funds in such organizations and not in labor organizations. It can be inquired what is there in the nature of labor organizations that requires the elaborate disclosures provided for under Section 7. If, as asserted by the Alabama Supreme Court, the fact that labor organizations extend throughout a large body of the economic life of the State constitutes a reason for requiring such detailed accounting from them, then the operations of the public utilities or the great business corporations or the American Legion or the Farmers Grange or of organized religion or of political organizations, all of which extend into and affect every branch of public life, should likewise be required to file similar reports.

It can be further objected that labor associations are subjected to regulation while employer associations and their agents, which associations are set up and established and function for the same purpose of representation on behalf of employers as labor organizations function on behalf of employees, are not licensed and required to file financial statements. Labor organizations on the one hand and employer associations on the other hand are parties to an economic struggle for a fair share of the joint product of capital and labor; these parties are in continuous relationship of either opposition or conciliation in the same field of industrial relationships. Why should not both parties to this economic struggle be treated alike?

More strikingly discriminatory, however, is the fact that Section 7, as well as Sections 15 and 16, are applicable only

to one class of labor organization—namely, labor organizations whose members are not subject to the Railway Labor Act. The exclusion of labor organizations subject to the Railway Labor Act from the requirements of Sections 7, 15, and 16 is manifestly contrary to the principle that all within the class against which any particular legislation is directed must be treated alike.

Bearing in mind the purposes of Sections 7, 15 and 16, what rational basis is there for the exclusion by the State of Alabama of all unions subject to the Railway Labor Act? The fact that the excluded class of labor organizations are subject to a particular Act of Congress, and the included organizations are not, does, of course, constitute a difference between labor oragnizations within the class of labor organizations generally. But, as stated by this Court in *Frost* v. *Corporation Commission*, supra:

> "• • • Mere difference is not enough, the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act with respect to which the classification is proposed, and can never be made arbitrarily and without any such basis', • • •"

This difference of inclusion and non-inclusion under the Railway Labor Act is the sole basis relied upon by the Alabama Supreme Court in determining that there was no denial of the equal protection of the laws. Such difference can, however, afford no basis for the exclusion for the simple reason that inclusion of labor organizations under the Railway Labor Act has absolutely no relevance to the attempted exemption, the inclusion accomplishing none of the purposes or objectives of Section 7, 15 or 16. The field of employee relationships regulated and dealt with under the Railway Labor Act is not the same field at all that is regulated and dealt with under the Alabama Act;

Sections 7, 15 and 16 of the Alabama Act deal with subjects which are in no way touched upon by the Railway Labor Act. The Railway Labor Act does not attempt or purport to regulate the internal operations of railway labor organizations; the Act merely imposes certain restrictions upon employer activity, provides for the establishment of collective bargaining units, and fosters collective bargaining relationships in a manner similar to that done by the National Labor Relations Act in the non-railroad interstate commerce field.[15] The Railway Labor Act does not require the filing of detailed financial statements or any other species of accounting by labor organizations subject to the Act. It does not forbid labor organizations subject to the Act to require or collect money in connection with any type of "work permit". It does not prevent any category of administrative or supervisory employee from becoming members in or being accepted for membership by any labor organization subject to the Act.[16] Thus, there would have been equal relevance for the State of Alabama to have excluded all labor organizations subject to the National Labor Relations Act; amenability to the provisions of either the National Labor Relations Act or the Railway Labor Act would not have accomplished what the Alabama Legislature sought to accomplish under the Bradford Act generally or under Sections 7, 15 and 16 thereof.

The only other possible basis for the exclusion of unions subject to the Railway Labor Act is that their internal operations in respect to the practices touched upon by Sections 7, 15 and 16 are in some manner or other dif-

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[15] For this very reason the National Labor Relations Act exempts persons subject to the Railway Labor Act (Sec. 2(2)).

[16] As a matter of fact, as disclosed by the record (R. 274), there is an extensive organization of railway supervisory personnel in the railroad industry (R. 243, 274).

ferent from those of other labor organizations—that they somehow function differently from all other classes of labor organizations as respects the proscribed practices. Whether any such difference exists is a matter for factual determination and is subject to evidentiary proof. Common knowledge and the showing made in the record in this case indicate conclusively that no such difference does in fact exist. The record shows (R. 2) that

> "Local No. 103 and the Alabama State Federation of Labor are not subject to the act of Congress known as the 'Railway Labor Act', but a large number of labor organizations which are subject to said act of Congress known as the railway labor act, were at the time Act No. 298 hereinafter referred to was allegedly adopted and allegedly approved, and are now, operating as labor organizations in the State of Alabama in precisely the same way as the trade and craft labor organizations affiliated with the Alabama State Federation of Labor, and in precisely the same way as said Local No. 103."

The record further shows (R. 232-3) that

> "At all times mentioned in the complaint, the Order of Railway Conductors, the Brotherhood of Locomotive Engineers, the Brotherhood of Enginemen and Firemen, the Brotherhood of Railway Trainmen were and are now, voluntary, unincorporated associations of employees of common carriers and corporations engaged in the transportation by rail of persons, baggage and other articles in all states of the United States, including the State of Alabama. Said common carriers are subject to the provisions of the Railway Labor Act. Said organizations have a membership of many thousands of persons throughout the United States, a large portion of which membership, in excess of 12,000, reside in and are residents of the State of Alabama. Its members are organized into autonomous subdivisions known as local unions, a large number

of which are located in the State of Alabama. Said organizations just named are not affiliated with the American Federation of Labor, nor are they affiliated with the Alabama State Federation of Labor, and are not affected in any way by said Act No. 298 above referred to. The local unions of the four orders named are conducted and operated in precisely the same manner as Local No. 103. Each of said national organizations is operated in precisely the same way as the United Brotherhood of Carpenters and Joiners of America.

"At all times mentioned in the complaint local labor organizations of the railway clerks, local labor organizations of the railway telegraphers, local labor organizations of the railway boilermakers, local labor organizations of the railway sheet metal workers, local labor organizations of the railway electricians, local labor organizations of the railway blacksmiths, local labor organizations of the railway machinists, local labor organizations of the railway maintenance men, local labor organizations of the Pullman Porters, were and are now unincorporated associations of employees of common carriers and corporations engaged in the transportation by railroad of persons, baggage and other articles in all states of the United States, including the State of Alabama. Said organizations are affiliated with the American Federation of Labor, but membership in said organizations is composed of or restricted to employees of common carriers. Said common carriers are subject to the provisions of the Railway Labor Act. Said organizations have a membership of many thousands of persons throughout the United States, a large portion of which, in excess of 12,000, reside in and are residents of the State of Alabama. Said local organizations affiliated with national organizations have jurisdiction over the particular trade or craft, all of which are organized and operated precisely along the same line as the United Brotherhood of Carpenters and Joiners of America, and said local labor organizations of said crafts and

trades affiliated with the Alabama State Federation of Labor and the American Federation of Labor are organized in precisely the same way and operated in precisely the same manner as the trade, craft and industrial organizations affiliated with the Alabama State Federation of Labor whose membership is not composed of the employees of common carriers."

There are seven standard craft international unions affiliated with the American Federation of Labor, such as the International Association of Machinists and the International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America, and others mentioned in the above paragraph, which are associated together in the Railway Employees Department, a department of the American Federation of Labor similar to the Metal Trades or Building Trades Departments. These organizations are members of the Railway Employees Department because they have members employed by the railroads. To the extent that they have such members employed by the railroads, they are, of course, subject to the Railway Labor Act. In addition to their locals of non-railroad employees, these organizations have affiliated with them local unions composed entirely of railroad employees, and have affiliated with them other local unions called "mixed locals" which are composed partly of railroad employees and partly of non-railroad employees in the particular craft. All of such locals, however, as affiliates of the same Internationals, operate under identical constitutions and, as is obviously true in the case of mixed locals, function identically both as regards internal affairs and in terms of their relationship to the public generally. However, under the exemption of railway labor organizations, one local of the same international union can freely admit supervisory employees to membership, can freely require work permits in certain situations, and can freely operate without making

the detailed financial disclosures required under Section 7, while another local cannot. A member of the same international organization is relieved of the necessity of paying a work permit fee during the period his standing is being investigated when he transfers from a railroad local into a non-railroad local, but that same member is subject to such obligation under the constitution of his international union when he transfers from a non-railroad local to a railroad local. Is there any possible basis in reason or in any ascertainable facts for the exclusion of unions whose members are employed in the railroad industry from the requirements of Sections 7, 15 and 16? It is respectfully submitted that there is not, but that, on the contrary, such exemption, viewed in the light of the proven facts and in the light of common knowledge, must be regarded as arbitrary, unreasonable and without any more rational basis than there would be for the exclusion of labor organizations whose employees were subject to various state health laws, or were subject to various state or federal social security laws or to any other of a great variety of laws which do not touch upon the matters dealt with in Sections 7, 15 and 16.

A case very much in point is that of *Davidow* v. *Wadsworth Mfg. Co.* (Mich.), 178 N. W. 776, 12 A. L. R. 605, in which the Court stated as follows:

> "We call attention to the case of *Cleveland C. C. & St. L. R. Co.* v. *Schüler* (1914), 182 Ind. 57, L. R. A. 1915A, 884, 105 N. E. 567, the headnote of which reads as follows: 'While railroads may be placed in a class to themselves for some legislative purposes, such classification, to be valid, must be for purposes that have to do with duties peculiar to them as carriers, or with dangers peculiar to their operation.'
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> "It was there held that a statute requiring railroad companies to pay any employee in full within seventy-

two hours after he had been discharged, or had voluntarily quit the service, and providing certain penalties, was unjustly discriminatory, and in violation of the State Constitution, since the classification made was arbitrary and without any valid reason for its basis. The court there said: 'It is true, as appellant concedes, that railroads may be placed in a class by themselves for some legislative purposes, but only for such purposes as have to do with duties peculiar to them as carriers or with the dangers peculiar to their operation. The rule is thus stated in *Bedford Quarries Co.* v. *Bough* (1907), 168 Ind. 671, 674, 14 L. R. A. (N. S.) 418, 80 N. E. 529; "The Legislature may make a classification for legislative purposes, but it must have some reasonable basis upon which to stand. It is evident that differences which would serve for a classification for some purposes would furnish no reason for a classification for legislative purposes. Such legislation must not only operate equally upon all within the class, but the classification must furnish a reason for, and justify the making of, the class; that is, the reason for the classification must inhere in the subject matter, and rest upon some reason which is natural and substantial, and not artificial. Not only must the classification treat all brought under its influence alike, under the same conditions, but it must embrace all within the class to which it is naturally related. Neither mere isolation nor arbitrary selection is a proper classification." ' "

The case of *Southern Railway* v. *Green, supra*, is also applicable. This Court held in that case as follows:

"It is averred in the complaint, and must be taken as admitted, that there are other corporations of a domestic character in Alabama carrying on the railroad business in precisely the same way as the plaintiff. It would be a fanciful distinction to say that there is any real difference in the burden imposed because the one is taxed for the privilege of a foreign corporation to do business in the State and the other for the

right to be a corporation. The fact is that both corporations do the same business in character and kind, and under the statute in question a foreign corporation may be taxed many thousands of dollars for the privilege of doing, within the State, exactly the same business as the domestic corporation is permitted to do by a tax upon its privilege, amounting to only a few hundred dollars. We hold, therefore, that to tax the foreign corporation for carrying on business under the circumstances shown, by a different and much more onerous rule than is used in taxing domestic corporations for the same privilege, is a denial of the equal protection of the laws, and the plaintiff being in position to invoke the protection of the Fourteenth Amendment, that such attempted taxation under a statue of the State, does violence to the Federal Constitution."

Sections 7, 15 and 16 cannot be saved by striking that portion of Section 2 exempting unions of railroad employees under the provisions of the saving clause (Sec. 21). To eliminate Section 2 would be to extend the scope of the law to embrace a class of labor organizations which the Legislature, in passing the statute, had by its very terms expressly excluded and which it clearly did not intend to make subject to the requirements in question, and thus to disregard the rule that, where the excepting proviso is found unconstitutional, the substantive provisions which it qualifies cannot stand. The existence of a saving clause does not affect the rule. See *Connally* v. *Union Sewer Pipe Co.*, 184 U. S. 450, (reversed on other grounds in *Tigner* v. *Texas*, 310 U. S. 141); *Frost* v. *Corporation Commission, supra; Sprague* v. *Thompson*, 118 U. S. 90; *Guinn* v. *U. S.*, 238 U. S. 347; *Myers* v. *Anderson*, 238 U. S. 368; *Smith* v. *Cahoon*, 283 U. S. 553; *Wilkinson* v. *Stiles*, 200 Ala. 279, 76 So. 45, and *Hickey* v. *Leviton*, 190 Wis. 646, 48 A. L. R. 434.

V

SECTIONS 7 AND 16 DEPRIVE AND DENY PETITIONERS RIGHTS GRANTED AND PROTECTED UNDER THE WAGNER ACT IN VIOLATION OF ARTICLE VI OF THE UNITED STATES CONSTITUTION.

Sections 7 and 16 operate to impose restraints or conditions upon the exercise of rights unconditionally granted by the National Labor Relations Act (49 Stat. 449); as such they must be declared inoperative as being in conflict with Federal legislation in a field in which Congress has paramount authority under Article VI of the United States Constitution which declares that the Constitution and Laws of the United States are supreme.

Section 7, as we have seen, licenses or conditions the very right of individuals to form and join labor organizations, and the right of labor organizations to function in the interests of their members, including the right to engage in collective bargaining. Section 16 forbids certain classes of employees to join labor organizations. These are rights specifically and freely granted under Section 7 of the National Labor Relations Act, pursuant to a valid Congressional purpose of minimizing labor disturbances that might interfere with interstate commerce. As such, these rights must necessarily be exercised free from any restraint by the State; otherwise the broad Federal objective might be forestalled or nullified by State legislation. When Congress passes legislation in the effectuation of powers conferred upon it by the Constitution and in a field in which it has plenary power to assert the right to legislate, all State enactments inconsistent with the Federal legislative plan are superseded, and any State legislation which conflicts with the Federal legislation must fall. Const. Art. VI, cl. 2; *Gibbons* v. *Ogden*, 9 Wheat. (U. S.)

1; *Cooley* v. *Board of Wardens*, 12 How. (U. S.) 299; *Hines* v. *Davidowitz*, 312 U. S. 52; *McGoldrick* v. *Gulf Oil Corp.*, 309 U. S. 414.

Specifically, Section 7 of the National Labor Relations Act confers the right upon employees "to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." In addition, Section 8(5) of that Act makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. These rights are, of course, included among or as a part of the "functioning" of labor organizations foreclosed except upon conditions imposed by Section 7 of the Bradford Act. In *Allen-Bradley, etc.*, v. *Wisconsin Employment Relations Board*, 315 U. S. 740, this Court, in discussing a directive of the Wisconsin Employment Relations Board under the Wisconsin Labor Act, clearly indicated that "if the order • • • caused a forfeiture of collective bargaining rights, a distinctively different question would arise," and further indicated that the States cannot deal even with local problems in a manner which "impairs and dilutes, qualifies or in any respect subtracts from any of the rights guaranteed and protected by the Federal Act." Since non-compliance with the filing provisions of Section 7 results in a forfeiture of bargaining rights under the broad prohibition against "functioning," the State of Alabama has done precisely what was interdicted in the *Allen-Bradley* case. Federal rights established by act of Congress are not less subject to restriction by the State than are rights granted under the Federal Constitution; accordingly the following quotation from the decision in *Thomas* v. *Collins, supra*, is applicable:

> "If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this

can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order."

If Section 7 be considered a licensing requirement, it likewise must be considered invalid; federally granted rights are not subject to license by the State. *International Text Book* v. *Pigg, supra; Follett* v. *McCormick, supra.*

Also in conflict with the National Labor Labor Relations Act is Section 16 of the Bradford Act which flatly prohibits any supervisory employee from exercising rights granted under the National Labor Relations Act. Section 7 of the National Labor Relations Act specifically gives all employees the right "to form, *join* or assist labor organizations." (Emphasis supplied.) The National Labor Relations Board has many times held that supervisory or administrative personnel are employees within the meaning of Section 2(3) of the National Labor Relations Act. *National Labor Relations Board* v. *American Potash & Chemical Co.*, 98 Fed. (2) 488; *National Labor Relations Board* v. *Luxuray, Inc.*, 123 Fed (2d) 106; *National Labor Relations Board* v. *Richter's Bakery*, 140 Fed. (2d) 870. See also *In the Matter of Soss Manufacturing Co.*, 56 N.L.R.B. No. 70. The fact that the Board, in some cases and in some industries, has excluded supervisory employees from appropriate collective bargaining units is immaterial. In doing so, the Board has acted pursuant to the discretion lodged in it under Section 9 of the National Labor Relations Act. Such discretion has not been lodged in the State of Alabama or in any other State. Accordingly, the State cannot undertake to make laws in this respect either as complementary to the Federal law (*Missouri Pacific R. R. Co.* v. *Porter*, 273 U. S. 431, at 435) or in pur-

ported help or aid of the Federal law (*Charleston & Western R. R. Co.* v. *Varnville Co.*, 273 U. S. 597, at 604).

Similarly, Section 16, by denying labor organizations the right to take into membership supervisory employees, operates to deny labor organizations and their members the right granted under Section 7 of the National Labor Relations Act "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." The National Labor Relations Board has certified as collective bargaining representatives countless labor organizations taking into membership both supervisory and non-supervisory employees. The inclusion of both classes of employees had been found appropriate for purposes of collective bargaining and was necessary for purposes of engaging in concerted activities for mutual aid or protection. It is in direct contravention of the policy of the National Labor Relations Act, as set forth in Section 1 thereof, thus to dilute the bargaining power which it was the purpose of the National Labor Relations Act to strengthen so that inequalities of bargaining power which in the past had resulted in industrial unrest could be eliminated.

It is respectfully submitted that Sections 7 and 16 impair rights unconditionally granted under the National Labor Relations Act, and to the extent of such impairment operate to frustrate the effectuation of a valid Federal purpose. As such they must be declared inoperative as contrary to the provisions of Article VI of the Constitution making the laws of the United States supreme.

VI

SECTIONS 15 AND 16 ARE SO AMBIGUOUS AS TO DENY DUE PROCESS OF LAW

Sections 15 and 16 subject persons engaging in customary and usual practices—practices not constituting crimes under the common law—to fine and imprisonment. While

the State may thus create crimes, it is incumbent upon it to be sufficiently explicit so as to inform what conduct on the individual's part will render him liable to criminal penalties. A statute, and particularly a criminal statute, which is so vague, indefinite and uncertain as to its meaning that the things and matters prohibited and its application to particular persons are not reasonably ascertainable, is void under the due process clause of the Fourteenth Amendment. *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Reese*, 92 U. S. 214, 23 L. Ed. 563; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, 85 L. Ed. 516.

Section 15 makes it a crime for a union or its representative to receive any sum (not constituting initiation fees or dues) as a "work permit." What is a "work permit"? No definition of the term is attempted in the Act, and it is submitted that the term has not achieved such a meaning in common parlance as to indicate clearly and unequivocally to the average citizen just what is intended. Do the traditional practices discussed under Part IV of this brief constitute the exaction of a "work permit" fee, and is it the intention of the Legislature to outlaw them? The Alabama Supreme Court declines to pass upon this specific question and states that it will determine whether any particular practice comes within the term "work permit" when and if the case is presented, but at the same time, the Court declares that the term "work permit" is not ambiguous. Thus, the State Court requires that citizens speculate as to whether any particular practice does or does not come within the prohibition of the law. Persons of common intelligence cannot be expected to know precisely what is meant by the term "work permit." Obviously, labor organizations and their members are obliged to guess as to which of their established practices now constitute crimes in violation of Section 15.

Similarly with the use of the terms "executive," "administrative," "professional," or "supervisory" in Section 16 forbidding employees of those categories to join or be accepted as members by labor organizations. Again, no definitions of these terms are set forth in the Act. The National Labor Relations Board, in its nine years of history, has been able to evolve no satisfactory definition of what constitutes a "supervisory employee," but depends upon the record made before it in each particular case. The categories of possible supervisory or administrative employees are endless. For instance, in a recent case before the National Labor Relations Board, involving all employees of the Western Union Telegraph Company (*In the Matter of Western Union Telegraph Company*, 58 N. L. R. B. No. 233), some twelve weeks and approximately 10,000 pages of record were required to determine which of some two hundred categories of disputed employees were to be excluded from a proposed nation-wide bargaining unit as "supervisory" employees. In Alabama apparently these employees would be required to determine for themselves, under penalty of criminal prosecution, whether they could or could not belong to a union, this without the benefits of any standards or guides whatsoever.

Is it possible for a clerk having two subordinates working alongside of him to determine whether he is a supervisory or an administrative employee? Or for a "lead man" in a machinists' shop? Cf. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72. Just where is the supervisory line to be drawn? Assuredly, men of ordinary intelligence must guess, and at their peril, as to just what categories can be considered to be included in the broad terms "administrative" and "supervisory."

In *Lanzetta* v. *New Jersey, supra,* the Court stated:

> *"No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids* • • •
>
> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play, and the settled rules of law; *and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."* (Emphasis supplied.)

Nor can judicial construction undertake to limit the vagueness or generality of the statute:

> "The question, then, to be determined is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. *It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders and leave it to the Courts to step inside and say who could be rightfully detained and who should be set at large.* This would, to some extent, substitute the judicial for the legislative department of the Government. The Courts enforce the legislative will when ascertained, if within the constitutional grant of power • • • To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty." (*United States* v. *Reese*, 92 U. S. 214, 23 L. Ed. 563, at p. 221.) (Emphasis supplied.)

It is respectfully submitted that Sections 15 and 16 are ambiguous and not susceptible of any exact interpreta-

tion so as reasonably to inform the public of the nature of the practices which the State has declared to be criminal, and for that reason must be declared invalid as a denial of due process.

Conclusion

It is respectfully submitted that, under the decisions cited and discussed in the foregoing arguments, petitioners have been denied and deprived by Sections 7, 15 and 16 of the Alabama Act of rights granted and secured under the Constitution and Laws of the United States, and that the decision of the Alabama Supreme Court should be reversed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1944

NO. 588

Alabama State Federation of Labor, Local Union No. 103 United Brotherhood of Carpenters and Joiners of America, American Federation of Labor, United Brotherhood of Carpenters and Joiners of America and B. E. Jones,

Petitioners,

—vs—

Robert E. McAdory, as Solicitor of Jefferson County, Alabama, and Holt McDowell, as Sheriff of Jefferson County, Alabama, and William N. McQueen, as Acting Attorney General of the State of Alabama,

Respondents.

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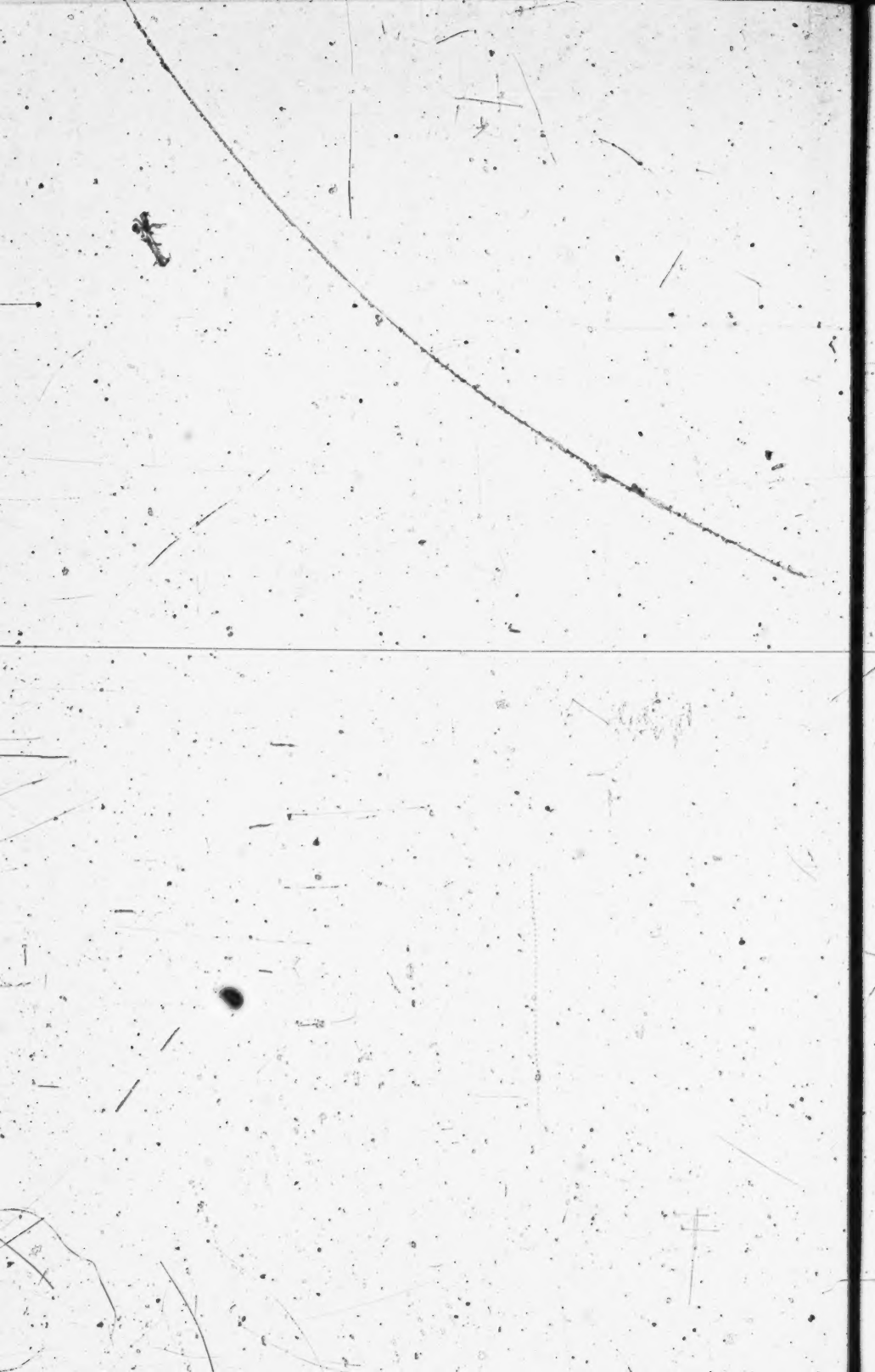

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INDEX

SUBJECT INDEX

	Page
Opinion of the Court	1
Jurisdiction	2
Statement of the Case	2
Summary of Argument	10
Argument	17
I. The record presents no case or controversy within the meaning of Article III, Section 2 of the Constitution of the United States	17
II. Section 7 of the Bradford Act is a reasonable exercise of the police power, and does not infringe any rights of free speech or assembly guaranteed by the First and Fourteenth Amendments to the Constitution of the United States	29
(A) The regulation is a reasonable exercise of the police power	29
(B) The regulation involves no infringement of free speech or assembly	35
III. Section 15 of the Bradford Act is a reasonable exercise of the police power	40

Page

IV. Section 16 of the Bradford Act is a reasonable exercise of the police powers, and does not violate the Fourteenth Amendment or infringe the rights of free speech or assembly guaranteed by the First and Fourteenth Amendments to the Constitution of the United States 44

(A) The regulation is a reasonable regulation of the exercise of the police power 44

(B) The regulation does not infringe free speech or assembly 50

V. Neither Section 7 nor Section 16 denies rights granted or protected under the National Labor Relations Act 51

VI. The exemption from the terms of the Bradford Act of labor organizations subject to the Railway Labor Act does not violate the Fourteenth Amendment to the Constitution of the United States 54

VII. Sections 15 and 16 of the Bradford Act are not so uncertain or ambiguous in their terms as to constitute a denial of due process of law 58

Page

(A) The terms "work permit" as used in Section 15 have a definite meaning 58

(B) The terms "executive, administrative, professional, or supervisory employee" as used in Section 16 of the Bradford Act have a definite meaning 59

Conclusion 63

TABLE OF CASES CITED

Aetna Life Insurance Co. v. Haworth, 200 U. S. 227 26

Alabama Power Co. v. Ickes, 302 U. S. 464 20

Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740 ..... 20, 23, 24, 33, 52, 57

Anniston Mfg. Co. v. Davis, 301 U. S. 337 21

Arkansas Fuel Oil Co. v. State of Louisiana, 304 U. S. 197 21

Page

Ashwander v. T. V. A., 297 U. S. 288 22

Baker v. Grice, 169 U. S. 284 ..... 21, 22

Bayside Fish Flour Co .v. Gentry, 297 U. S. 422 47

Boeing Airplane Co., 46 N. L. R. B. No. 35 ..... 45, 49

Borden's Farm Products Co. v. Baldwin, 283 U. S. 194 ..... 22, 46

Borden v. Sparks, et als, 54 Fed. Supp. 300 ..... 28, 32, 37

Cherokee Nation v. Georgia, 5 Pet. 1, 8 L. Ed. 2575 19

Christoffel v. Wisconsin Employment Relations Board, 243 Wisc. 332, 10 N. W. (2d) 197, cert. den. 64 S. Ct. Rep. 90 52

Colorado National Bank of Denver v. Bedford, 310 U. S. 41 28

DeJonge v. Oregon, 299 U. S. 355 34

General Committee v. Missouri-Kansas-Texas R. Co., 320 U. S. 323, 328, 329 55

General Motors Sales Corp., 34 N. L. R. B. 1052 ..... 46, 49

Hague v. C. I. O., 307 U. S. 496, 514 36

Page

Hardware Dealers Mutual Fire Insurance Co. v. Glidden, 284 U. S. 151 34

Home Building & Loan Association v. Blaisdell 290 U. S. 398, 448 43

Howat v. State of Kansas, 258 U. S. 181 ..... 20, 33

Humble Oil Case, 16 N. L. R. B. 112 45

International Association of Machinists v. N. L. R. B., 311 U. S. 72 45

J. D. Adams Mfg. Co. v. Storen, 304 U. S. 307 27

Jefferson County v. Johnson, 232 Ala. 406, 168 So. 450 18

J. I. Heinz Co. v. N. L. R. B., 311 U. S. 514 45

Lanzetta v. State of New Jersey, 306 U. S. 451 61

Life & Casualty Insurance Co. v. McCray, 291 U. S. 566 34

Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61 47

Marshall Field & Co., 34 N. L. R. B. 1 ..... 45, 49

Page

Maryland Dry Dock Co., Case Nos. R. 5212 and 5214 ..... 46, 49

Massachusetts v. Mellon, 262 U. S. 447 19

Metropolitan Casualty Insurance Co. of N. Y. v. Brownell, 294 U. S. 580 47

Mobile Dry Docks Co. v. The City of Mobile, 146 Ala. 198, 208, 40 So. 205 61

Murdock v. Pennsylvania, 319 U. S. 105 34

National Labor Relations Board v. Cleveland Cliffs Iron Co., C. C. A. 6, February 11, 1943 ..... 45, 48

National Labor Relations Board v. Jones and Laughlin, 301 U. S. 1, 17 54

N. C. & St. L. R. R. Co. v. Wallace, 288 U. S. 249 19

Northwestern Life Insurance Co. v. Riggs, 203 U. S. 243, 255 36

People, ex rel. Bryant v. Zimmerman, 278 U. S. 63 ..... 34, 37, 55

Pierce v. Society of Sisters of Holy Names, 268 U. S. 510 27

Quaker City Cab Co. v. Pennsylvania, 277 U. S. 389, 400 54

Page

Rock Hill Printing & Finishing Co., 29 N. L. R. B. 673 ..... 46, 49

Scott v. Ala. State Bridge Corp., 233 Ala. 12, 17, 169 So. 273, 277 18

Silver v. Silver, 280 U. S. 117 47

South Carolina State Highway Department v. Barnwell Bros., Inc., 303 U. S. 177 53

Spector Motor Service v. McLaughlin, 65 S. C. (Adv. Sheet) 152, 154 ..... 23, 60

Steele v. L. & N. R. R. Co., 65 S. Ct. 266 56

The Sherwin Williams Co., 37 N. L. R. B. No. 44 ..... 45, 49

Thomas v. Collins, No. 14 October Term 1944 ..... 24, 25, 37, 54, 57

Tigner v. State of Texas, 310 U. S. 141 47

Union Collieries Coal Co., 41 N. L. R. B. 961 46

United States Stamping Co., 1 N. L. R. B. 164 46

United States v. Carolene Products Co., 304 U. S. 144, 152 43

United States v. Cohen Grocery Co., 255 U. S. 81 62

Page

United States v. Jasper White, Vol. 88, L. Ed. Adv. Sheet No. 16, p. 1149 36

United States v. Laudani, 320 U. S. 543, 547 .... 45, 49

United States v. Reese, 92 U. S. 214 61

United States v. South Eastern Underwriters Association, L. Ed. Adv. Sheet, Vol. 88, No. 16, p. 1082 53

Watson v. Buck, 313 U. S. 387 ..... 22, 25, 58

Western Turf Association v. Greenberg, 204 U. S. 359, 363 36

White v. Johnson, 282 U. S. 367 21

Wisconsin Labor Relations Board v. Ruepino Leather Co. (Wisc.), 279 N. W. 673, 117 A. L. R. 398 33

Wright v. Central Kentucky Gas Co., 297 U. S. 537 27

TEXTS CITED

"Labor Disputes & Collective Bargaining," Volume 2, by Ludwig Teller 46

STATUTES CITED

	Page
Code of Alabama 1940, Title 7, Sections 156-168	2, 17
General Acts of Alabama 1943, Page 253	3
28 U. S. C. A. 344 (Judicial Code § 237 (a), (b), as amended)	2
Fair Labor Standards Act, Section 13 (a) (Section 213, Title 29, U. S. C. A.)	46, 60
National Labor Relations Act (Title 45, U. S. C. A., Sections 151-163)	57
United States Revenue Act of 1943, Section 112	32, 38

CONSTITUTIONAL SECTIONS CITED

First and Fourteenth Amendments to the Constitution of the United States	29, 44
Fourth and Fifth Amendments to the Constitution of the United States	36
Article III, Section 2, Constitution of the United States	2, 10, 18, 24, 63

IN THE

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Respondents.

BRIEF FOR RESPONDENTS

THE OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Alabama is reported in 18 Southern (2d) 810, Advance Sheets. A copy of such opinion is appended as Exhibit "B"

to the Petition for Writ of Certiorari filed herein and appears in the Record herein at Page 321.

STATEMENT AS TO JURISDICTION

Petitioners assert jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U.S.C.A., Section 344-b.

Respondents, however, contend that no case or controversy within the meaning of Article III, Section 2 of the Constitution of the United States is presented in this proceeding and that, therefore, this Court is without power or jurisdiction to adjudicate the questions of alleged conflict of the State statute, known as the Bradford Act, with the provisions of the Constitution of the United States. (This jurisdictional question is hereinafter discussed in Subdivision I of the Argument.)

STATEMENT OF THE CASE

This action was instituted in the Circuit Court for the Tenth Judicial Circuit of Alabama (Jefferson County, Alabama) by a petition for a declaratory judgment filed pursuant to the Alabama Declaratory Judgment statute (Title 7, Sections 156-168, Code of Alabama 1940), in which the petitioners, Alabama State Federation of Labor; Local Union No. 103, United Brotherhood of Carpenters and Joiners of America; American Federation of

Labor; United Brotherhood of Carpenters and Joiners of America; and B. E. Jones, claiming their rights, status, or other legal relations to be affected by an act of the Legislature of Alabama referred to as the Bradford Act (General Acts of Alabama of 1943, Page 253), sought to have said Act, or certain sections or provisions thereof, declared invalid as being in conflict with the Constitution of the State of Alabama and certain provisions of the Constitution of the United States.

The respondents are Robert E. McAdory, Solicitor of Jefferson County, Alabama; Holt McDowell, Sheriff of Jefferson County, Alabama, and William N. McQueen, Acting Attorney General of the State of Alabama.

The court below held the Act as a whole was not adopted contrary to any provision of the Constitution of Alabama. The court below did not specifically pass upon all of the sections of said Act. It held that Sections 7, 15, and 16 were valid; and held invalid "Section 12 and so much of Section 13, as prevents a strike except by a vote of a majority of the employees in a business, plant, or in unit of such plant expressed in a secret written ballot", * * * * * "together with the provisions of Section 14 intended to make more effective that part of Section 13 as to unlawful strikes; and all of Section 17". It further held that the sections or portions of sections declared to be invalid did not affect the validity of the remaining provisions of the Act.

The only sections of the Act specifically involved in this appeal are Sections 7, 15, and 16, the remaining provisions either having been held unconstitutional by the court below, or their validity not having been challenged in this proceeding.

The Bradford Act is a comprehensive State Labor Act under which is created a Department of Labor, and which provides for a Board of Mediation to assist in the settlement of labor disputes. The policy of the Act is declared in Section 1.

Section 7 contains provisions (a) under which labor organizations, as defined in the Act, then functioning in Alabama, shall within sixty days after the effective date of the Act, file with the Department a copy of the constitution and by-laws of the organization and a copy of the constitution and by-laws of the national or international union, if any, to which it belongs; (b) requiring every labor organization, as defined in the Act, thereafter desiring to function in Alabama likewise to file copies of such constitution and by-laws with the Department of Labor; and (c) requiring the filing within thirty days of copies of changes or amendments to such constitution or by-laws.

Section 7 further requires every labor organization functioning in the State and having twenty-five or more members in any calendar year to file with the Department of Labor annually, on or before February 1st, a report in writing with respect to the

operation of the labor organization during the next preceding calendar year, setting forth certain information, including financial data, as specifically provided in the Act, and upon the filing of such report to pay the Director of Labor a fee therefor of Two Dollars. The information contained in such report is also required annually to be filed with the members of the labor organization. The Director construed this provision was complied with by posting a copy of the report on the bulletin board or in some conspicuous place in the union office or meeting place, with notice to the membership that the report is available for inspection by the members (R. 266).

A violation of these provisions by a labor organization subjects the organization to a penalty, enforceable under Section 18 of the Act.

Section 7 also contains a provision making it unlawful for any officer or agent of a labor organization to collect dues, fees, assessments, fines, or other monies from its members, while the organization is in default with respect to the filing of the annual report. A violation of this provision is made a misdemeanor under Section 18 of the Act.

Section 15 makes it unlawful for any labor organization or any other person to collect, receive, or demand any fee, assessment, or sum of money, other than initiation fees or dues, for what is termed "a work permit" or "as a condition for the privilege to work".

Section 16 prohibits executive, administrative, professional, or supervisory employees from being accepted as members of a labor organization admitting to membership therein employees other than persons employed in an executive, administrative, professional, or supervisory capacity, or in a labor organization affiliated with a labor organization permitting membership to employees other than persons employed in an executive, administrative, professional, or supervisory capacity. The Section contains a proviso to the effect that it shall not be construed so as to interfere with or void any existing insurance contract.

The cause was submitted for the rendition of a declaratory judgment upon the pleadings and proof substantially as stated in petitioners' Statement of the Case, except respondents deny the correctness of the statement therein that the evidence submitted or facts of which the court takes judicial knowledge established a "lack of rational basis for the particular sections", 7, 15, and 16, or that such evidence sustained the charge that "such sections were discriminatory".

It was shown that, up to February 16, 1944, one hundred ninety two labor organizations functioning in Alabama had filed the annual financial reports as required in Section 7 of the Act indicating compliance with the previous requirements for the filing of copies of the constitution and by-laws of the organization, without protest or objection that

the filing of such financial reports entailed any unreasonable amount of work or involved any difficulty or impossibility in the compliance therewith (R. 268).

The petition alleged the duty of the respondents McAdory and McDowell, as Solicitor and Sheriff, to enforce the criminal provisions of the Act, and the fact that they were prepared to and would do so unless the Act were declared unconstitutional; and contained allegations with respect to the expenditures of public money which would be required in such enforcement (R. 19), the allegation of which facts was admitted (R. 227).

The petition further alleged the public interest involved in a determination of the constitutionality of the Act and the desirability for a judicial construction thereof (R. 19, 20), which allegations were admitted (R. 227).

It was not shown, however, that any specific prosecution had been instituted or threatened against the petitioners.

In Section 17 of the petition, the manner in which the petitioner United Brotherhood of Carpenters and Joiners of America provided for the issuance of a "working permit" was alleged (R. 20, 21), and such facts were admitted (R. 227). The terms and provisions with reference to the issuance of "work permits", or "working permits", by such

organization is fully set forth in Section 46 of its by-laws (R. 70, 71 and 72). Provisions with reference to the issuance of "work permits", or "working permits", by Local Union 103, United Brotherhood of Carpenters and Joiners of America, are shown in the Working Rules of this organization in Section III, (R. 200, 201 and 202) Section V "A" (R. 203) and in Section VII "D" (R. 205)

Evidence was introduced on behalf of the respondents to the effect that:

(a) Nine international and national unions are composed solely of foremen and supervisory employees;

(b) Twenty-nine international and national unions permit membership of foreman in the same union with production workers;

(c) Thirty-seven international and national unions exclude foremen and general supervisors, although working foremen and minor supervisors are admitted to membership in some instances;

(d) Of the remaining one hundred and twenty international and national unions, it was reported by the United States Department of Labor: "Most of these exclude foremen from membership, although some of their locals may include foreman in the absence of a constitutional provision debarring them" (R., 277, 278); and that a number of local unions

are composed solely of supervisory employees (R. 279). See United States Department of Labor Memorandum No. 7, introduced in evidence (R. 268-289).

The petitioner B. E. Jones testified with reference to the admission of superintendents and foremen as members of Local 103 (R. 298-309). In this testimony, the witness stated:

> "As superintendent of a plant, I am subject to discipline by the union of which I am a member should I violate any of the union rules." And again:
>
> "I would say that in some of these plants some of the men in a supervisory capacity would feel, at times torn between loyalty to their employers and loyalty to their employees. This would probably happen when the man acting in a supervisory capacity was not in sympathy with the union."

SUMMARY OF ARGUMENT

I

Since the State, in the exercise of its police power, may adopt reasonable regulations applicable to labor organizations, the provisions of Sections 7, 15, and 16 of the Bradford Act may not be condemned as unconstitutional under the rules of this Court, except in a case involving the application of the statutory provision, where all of the attending facts and circumstances have been presented and the federal questions have been determined by the court below. Although the Supreme Court of Alabama, pursuant to the Alabama declaratory judgment statute, may have been authorized to consider and render a declaratory judgment upon Sections 7, 15, and 16 of the Bradford Act, decision by this Court of the constitutional questions relating to these sections and the possible application thereof to various situations and circumstances, under the established rule of this Court, do not present a case or controversy within the judicial power of this Court under Article III, Section 2 of the Constitution of the United States. A decision by this Court upon such questions would, in its nature, be an advisory opinion largely based upon hypothetical facts; and the decision of this Court thereon, not now being necessary and unavoidable, should await the specific application of the statutory provisions when the party affected may plead or assert any constitutional privilege or immunity which he claims to be invaded by

the statute or the application thereof. This is the result of the difference in the power and jurisdiction of the State Supreme Court and of this Court in the determination of constitutional questions.

II

Section 7 of the Bradford Act, requiring labor organizations to file a copy of its constitution and by-laws and amendments thereto, and subsequently to file annual financial reports, constitutes a reasonable regulation of labor organizations, enacted by the State in the exercise of its police power. These documents are for the purpose of furnishing information to the Department of Labor, and in no sense are they intended, nor may they fairly be construed, as imposing a license, or as interfering with or infringing upon the rights of freedom of speech or assembly of any individual. There is no discretion involved on the part of any official. There is no license, in fact or effect. The fee of two dollars, for the filing of the annual financial report relating to the conduct of the organization in the preceding calendar year, has been construed by the court below as a nominal filing fee and not a tax. A violation of these provisions is enforceable only against the labor organization itself or its officers or agents. Since the regulation is reasonable, it necessarily follows that it is within the power of the State to provide an appropriate method of enforcement. The civil rights of freedom of speech and assembly are not guaranteed to labor organizations or associations as

such. Since the Act contemplates the free exercise of speech and assembly by the individual members, in order to adopt a constitution and by-laws and to complete the organization before such documents are required to be filed or the organization thereafter commences to function as an organization, there is no interference with individual rights of speech or assembly. No such instance was presented to or envisioned by the trial court or the Supreme Court of Alabama.

III

Section 15 of the Bradford Act, prohibiting labor organizations from charging for what is termed a "work permit", without interfering with the right of the labor organization to collect any amount of initiation fees or dues, was adopted by the Legislature to protect the fundamental right to work. No specific instance involving the issuance of a work permit in violation of this provision is presented in this case. The burden was on the petitioners to prove its unreasonableness, yet none of the witnesses discussed this practice. Various provisions in the by-laws of the labor organizations, petitioners in this case, were introduced in evidence with respect to the issuance of "work permits" or "working permits" but the facts and circumstances attending their issuance, or abuses, or lack of abuses involved in the practice were not shown. The Court will therefore presume that the Legislature knew of facts sufficient to justify the adoption of this regulation, the contrary not appearing. The

wisdom of legislation as a matter of policy is a question with which the Court is not concerned, but addresses itself to the legislative branch of the government.

IV

Section 16 of the Bradford Act, in prohibiting labor organizations from accepting as members thereof persons employed in an executive, administrative, professional or supervisory capacity, where the constitution and by-laws of the organization permit membership to other employees, has the effect of requiring separate labor organizations for these two classes of employees. The executive, administrative, professional and supervisory employees are more closely related to management. The supervisory employee is the representative with whom other employees must negotiate to obtain a collective bargaining agreement. In other words, employees which constitute management, or which are so closely related to management, and who must sit across the table in negotiating a collective bargaining agreement with employees generally, logically fall into a different class, and were so treated by the Legislature. Their interests and sympathies are different. Many labor organizations have long recognized the fact by voluntarily excluding such supervisory employees. Supervisory employees are differently treated in the Fair Labor Standards Act and in the administration of the National Labor Relations Act. Such employees, by reason of their re-

lation to management, are denied the right to vote in the choice of a bargaining agent in the administration of the National Labor Relations Act. The wisdom of such a regulation addresses itself to the legislative branch of the government. It is based upon the fundamental principle that one may not serve two masters, and is therefore not arbitrary.

V

Neither Section 7 nor Section 16 conflicts with the National Labor Relations Act. The principal provisions of the National Labor Relations Act are recognized and the provisions of the State Act concur therein; and such provisions are, by the Bradford, Act, extended in their operation into a field not covered by the Federal Act. The record shows no instance of conflict with any application of the National Labor Relations Act. This Court has held that the field was not preempted by the Federal Act, and has upheld the validity of State labor laws and orders adopted pursuant thereto not shown to be in actual conflict with the National Labor Relations Act.

VI

The exception of labor organizations the members of which are subject to the Railway Labor Act does not result in a discriminatory classification forbidden by the Fourteenth Amendment to the Constitution of the United States. The resulting classifica-

tion is not arbitrary but was probably adopted in consequence of the different treatment by Congress of employees engaged in interstate transportation, and the labor organizations chosen by them. In this field Congress has apparently preempted State legislation, while it has not done so as to employees or labor organizations amenable to the National Labor Relations Act. The Legislature was well within the exercise of its discretion in the adoption of this classification or exemption. It is therefore not arbitrary.

VII

Section 15 of the Bradford Act is not so uncertain or ambiguous in its terms as to constitute a denial of due process of law. The term "work permit" appears in the by-laws of labor organizations and is therefore well understood in labor circles, and has a definite meaning. Its issuance or use is not prohibited. That which is forbidden is the making of a charge therefor in addition to any initiation fee or dues of the labor organization.

Surely no labor organization in good faith could claim that it was not informed of the nature and cause of the accusation in a prosecution based upon a violation of such provisions. The provision therefore does not possess such uncertainty or ambiguity as to deny due process of law under the Fourteenth Amendment to the Constitution.

Likewise, the terms of Section 16 of the Bradford Act, prohibiting labor organizations from accepting into membership persons employed in an executive, administrative, professional or supervisory capacity, when other classes of employees are permitted membership therein, are provisions well understood in labor circles. Labor organizations for many years have adopted provisions in their constitutions or by-laws forbidding membership to such supervisory employees. The expressions used to accomplish this purpose sometimes vary. They are generally understood, however, to comprehend employees which are authorized to exercise the authority to hire or fire. These terms are used and will be construed by the Court in their popular meaning as related to labor organizations. Strictly construed, the courts might well hold that a supervisory employee, as used in the Act, has reference only to one who is employed exclusively in such capacity. These terms substantially appear in the Fair Labor Standards Act, and supervisory employees are separately classified in the administration of the National Labor Relations Act. A labor organization required to conform to the provisions of this Section could not well contend that its meaning is too uncertain to enable it so to do, nor could it well contend that it was not informed of the nature and cause of the accusation if confronted with a prosecution. The enforcement of the Act is appropriately directed against the organization, and not individuals.

ARGUMENT

I

THE RECORD PRESENTS NO CASE OR CONTROVERSY WITHIN THE MEANING OF ARTICLE III, SECTION 2 OF THE CONSTITUTION OF THE UNITED STATES.

This proceeding was instituted under the declaratory judgment statute of Alabama (Section 156 to 168, Title 7, Code of Alabama 1940) for the purpose of determining the construction or validity of the Bradford Act, and to obtain a declaration of rights, status, or other legal relations thereunder (Section 157, Title 7, Code of Alabama 1940).

The Supreme Court of Alabama, in considering the declaratory judgment statute, commented:

> "The courts, however, are not concerned with the wisdom or policy that induced the enactment of these statutes. That is a matter within the province of the lawmaking body of magistracy—the Legislature.
>
> "The courts are concerned, however, with their interpretation and application to accomplish the purpose and remedy the evils at which such legislation is directed—to see that the pro-

ceedings invoke judicial power, to the end that their judgments are binding."

Jefferson County v. Johnson, 232 Ala. 406, 168 So. 450.

And in the case of *Scott v. Ala. State Bridge* Corporation, 233 Ala. 12, 17; 169 So. 273, 277, the Court, in referring to the Alabama declaratory judgment statute, held:

"Controversies touching the legality of the acts of public officials, or public agencies, challenged by parties whose interests are adversely affected, is one of the favored fields for such declaratory judgment, styled in the act and in the authorities, the 'declaration'. Official action, done or threatened, challenged as unlawful, a usurpation of official power, whether lack of authority appears in the terms of the statutes, or because of unconstitutionality thereof, are said to be determinable in this manner rather than force the parties to seek injunctive relief, which involves many questions going to the propriety of such relief."

While this Court has held that the determination of its judicial power, as defined in Article III, Section 2 of the Constitution, is not dependent upon the form of the proceeding, it has nevertheless adherred to a different—a much stricter—rule in determining whether a case or controversy is presented

which invokes its power to pass upon the constitutional validity of a State statute or Act of Congress.

In the case of *N. C. & St. L. RR Co. v. Wallace*, 288 U. S. 249, the Court said:

> "The states are left free to regulate their own judicial procedure. Hence, changes merely in the form or method of procedure by which federal rights are brought to final adjudication in the state courts are not enough to preclude review of the adjudication by this Court, so long as the case retains the essentials of an advisory proceeding, involving a real, not a hypothetical controversy, which is finally determined by the judgment below."

In that case, the proceeding was construed the same as if it constituted a bill to enjoin the collection of a tax from the petitioner, dependent upon the validity of the statute imposing the levy, which was challenged as being in conflict with the Constitution of the United States; and all of the facts and circumstances relating to the question of tax liability of petitioner were introduced and considered by the Court.

In the case of *Massachusetts v. Mellon*, 262 U. S. 447, the Court quoted approvingly from *Cherokee Nation v. Georgia*, 5 Pet. 1, 8 L. Ed. 25, 75, the following:

> " 'It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief.
>
> " 'This court can have no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual or threatened operation, upon rights properly falling under judicial cognizance, or a remedy is not to be had here.' "

See:

Alabama Power Co. v. Ickes, 302 U. S. 464, in which the Court refused to pass upon the validity of an Act of Congress;

Howat v. State of Kansas, 258 U. S. 181, where the Court refused to pass upon the validity of the Industrial Relations Act of Kansas:

Allen-Bradley Local vs. Wisconsin Employment Relations Board, 315 U. S. 740, in which the Court confined its consideration of the State labor act to the validity of the specific order entered thereunder and commented:

> "We deal, however, not with the theoretical disputes but with concrete and specific issues raised by actual cases";

and again said:

> "We are not under the necessity of treating the state act as an inseparable whole";

White v. Johnson, 282 U. S. 367, in which appellant attempted to enjoin enforcement of the criminal provisions of the Radio Act of 1927 on the ground that it was in conflict with the Constitution of the United States. In that case the Court said:

> "The constitutionality of a statute is not drawn ino question except in connection with its *application* to some person natural or artificial". (Emphasis added);

Arkansas Fuel Oil Co. v. State of Louisiana, 304 U. S. 197, in which the Court, in declining to pass upon a State statute, quoted approvingly from *Baker v. Grice*, 169 U. S. 284, 292, the following rule:

> " 'It is matter of common occurrence—indeed, it is almost the undeviating rule of the courts, both state and Federal—not to decide constitutional questions (of the validity of a State Act) until the necessity for such decision arises in the record before the court.' ";

Anniston Mfg. Co. v. Davis, 301 U. S. 337, where the Court, in refusing to pass upon the constitutionality of an Act of Congress said:

> "Constitutional questions are not to be decided hypothetically. When particular facts control the decision, they must be shown."

The taxpayer was then remitted to actual trial of his rights under the statute relating to recovery of "processing" taxes;

Bordens Farm Products Co. v. Baldwin, 283 U. S. 194;

Baker v. Grice, 169 U. S. 284;

Ashwander v. T.V.A., 297 U. S. 288, and concurring opinion by Mr. Justice Brandeis in which he summarized the rules under which the Court has avoided passing upon constitutional questions (pages 345-348), and cited supporting authorities.

In the case of *Watson v. Buck*, 313 U. S. 387, the appellee attempted to enjoin the enforcement of two Florida statutes regulating the business of persons holding musical copyrights on the ground that it was in conflict with the Constitution of the United States. These statutes contained forty-two separate sections. In declining to pass upon any except one phase of the statutes (in which the Court held that the Federal copyright laws did not deprive the States of their recognized power to regulate combinations in restraint of trade), the Court, speaking through Mr. Justice Black, said:

> "Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case. It is of course conceivable that a statute might be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it."

This case was cited in *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, 747, and in *Spector Motor Service v. McLaughlin*, 65 S. Ct. (Advance Sheets) 152, 154. In the last cited case, Mr. Justice Frankfurter said:

> "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality—here the distribution of the taxing power as between the State and the Nation—unless such adjudication is unavoidable."

Applying the foregoing rules to the case at bar, we find little more in this case than an opinion construing the statute at the instance of interested parties. It is true that the petitioners, as labor organizations, are amenable to the provisions of the statute; and the petitioner B. E. Jones as a member had an

interest therein. It is true that the respondents are State officers charged with certain duties in the enforcement of the criminal or penal provisions of the statute, and, unless the statute is declared unconstitutional, purpose and intend to perform such duties. The Supreme Court of Alabama, pursuant to the declaratory judgment statute, proceeded to render an opinion upon the constitutionality of various provisions of the statute brought under attack. Petitioners did not separately challenge all of the sections or provisions of the Act. In passing upon the statute, the Court commented:

> "All parties upon this appeal argue the case upon the assumption of the regularity of the proceeding in every respect, and the case will be so considered here." (R. 321)

The court below, in passing upon the various provisions of this statute, pursuant to the declaratory judgment statute, was not faced with the rules limiting its power and jurisdiction which confront this Court under Article III, Section 2, of the Constitution of the United States.

Since the right of a State to adopt statutes regulating labor organizations is hardly to be questioned (*Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, and *Thomas v. Collins*, No. 14 October Term, 1944), Sections 7, 15, and 16 of the Bradford Act are not so "flagrantly and patently violative" of the Constitution as to

present a case or controversy requiring this Court to pass thereon without awaiting the trial of a case in which the validity of the specific provisions is necessarily involved. (*Watson v. Buck*, 313 U. S. 387).

For instance, Sections 7 and 16 are challenged as infringing the civil rights of assemblage, speech, press, and petition guaranteed under the First and the Fourteenth Amendments to the Constitution. Yet no specific instance of an attempt to exercise such rights or any attempt to interfere therewith is shown in the Record. (Cf. *Thomas v. Collins*, No. 14, October Term, 1944.)

Section 7 requires the labor organization, only after it is organized and has adopted a constitution and by-laws, to file the same with the Director of the Department of Labor, before it proceeds to function pursuant thereto. Nothing in the decision of the court below appears to the contrary, therefore any question of infringement of the civil rights of individuals under Section 7 would be hypothetical at most, in addition to violating this Court's rule to first require the State Court to pass upon the specific application thereof. Nothing showing such an infringement was presented to the court below.

Section 15, prohibiting the practice of *charging* for "work permits", is challenged as being indefinite, yet no specific instance involving a prosecution under this provision with the attending facts and cir-

cumstances is here presented; nor has the court below passed upon any specific application of this provision. The terms are shown to have been borrowed from labor organizations and are well known and understood in such circles. It is not their use which is forbidden, but the charge therefor in addition to initiation fees or dues collected by the organization.

Notwithstanding the fact that the Supreme Court of Alabama, pursuant to the Declaratory Judgment Act, was empowered to render an opinion upon the constitutional validity of Sections 7, 15, and 16 of the Bradford Act, we do not believe that, under the different rules applicable to this Court, a case or controversy within the power and jurisdiction of this Court is presented, or that a decision thereon by this Court is necessary or unavoidable prior to the institution of a case involving the specific application of the statutory provisions, in which the party affected may plead in defense any constitutional rights, privileges, or immunity which he deems affected by the statute.

The case of *Aetna Life Insurance Co. v. Haworth*, is clearly distinguishable. The facts and circumstances with reference to permanent disability under a specific insurance policy and the resulting questions of liability or non-liability were there presented to the Court in a declaratory judgment proceeding. There we find both the form and substance of a real case or controversy.

In the case of *Pierce v. Society of Sisters of Holy Names*, 268 U. S. 510, cited by petitioners, the defendants sought an injunction against the enforcement of a State statute under which children would be required to attend public schools, and would be denied the privilege of attending schools conducted by defendants, which was obviously discriminatory and which involved immediate and irreparable injury to defendants. The facts of that case are clearly distinguishable from a case where an interested party merely seeks a declaration construing various statutory provisions.

In the case of *J. D. Adams Mfg. Co. v. Storen*, 304 U. S. 307, cited by the petitioners, the taxpayer, by a declaratory judgment proceeding, sought a determination of the constitutional invalidity of a State statute of Indiana imposing a gross income tax, the levy of which upon the taxpayer with penalties was threatened; and the facts relating to the conduct of the taxpayer's business were specifically presented in a determination of the application of the tax and the invalidity thereof as affecting gross receipts of the taxpayer derived from interstate commerce, which the State was without power to tax.

In *Wright v. Central Kentucky Gas Co.*, 297 U. S. 537, cited by petitioners, certain gas consumers filed a declaratory judgment suit attacking the validity of a resolution and ordinance of the City. It was decided by the State Court that the resolution

and ordinance were valid and that the City properly represented any interest of the gas consumers. This Court, reaching the conclusion that the gas consumers had no vested right which precluded the City from adjusting the controversy, affirmed the case.

The case of *Colorado National Bank of Denver v. Bedford*, 310 U. S. 41, cited by petitioners, was a declaratory judgment proceeding to determine the tax liability of the Bank as applicable to certain services rendered or performed by it (rental of safety deposit boxes), against the payment or collection of which tax the Bank raised the question of its immunity as a Federal instrumentality. The particular facts and circumstances involved, necessary for a consideration of the question, were presented for the consideration of the Court.

In each of the cases relied upon by petitioners, there was an actual or threatened application of the statute, in an adversary proceeding, in which the facts and circumstances showing liability or threatened injury were presented in a case or controversy consistant with the rule of this Court, clearly distinguishable from the case under consideration. See *Borden, et als v. Sparks*, et als, 54 Fed. Supp. 300, in which a three-Judge District Court upheld the validity of Section 7 of the Bradford Act, but declined to pass upon other provisions thereof.

II

SECTION 7 OF THE BRADFORD ACT IS A REASONABLE EXERCISE OF THE POLICE POWER, AND DOES NOT INFRINGE ANY RIGHTS OF FREE SPEECH OR ASSEMBLY GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

(A) The Regulation is a Reasonable exercise of the Police Power.

In the first sentence of Section 7 of the Bradford act, it was provided as follows:

> "Section 7. Every labor organization functioning in Alabama shall within sixty days after the effective date of this Act, and every labor organization hereafter desiring to function in Alabama shall, before doing so, file a copy of its constitution and its by-laws and a copy of the constitution and by-laws of the national or international union, if any, to which the labor organization belongs, with the Department of Labor, but this provision shall not be construed to require the filing of any ritual relating solely to the initiation or reception of members. * * *"

It will be noted that the Legislature was here dealing, First,—with labor organizations then functioning in Alabama; and Second,—with Labor or-

ganizations which might thereafter desire to function in Alabama.

As to the first, they were allowed sixty days within which to file a copy of the constitution and by-laws of the organization. Organizations in the second class, those thereafter desiring to function in the State, before doing so, were required to file copy of the constitution and by-laws of the organization. No fee is imposed for the filing of such documents.

Provision is made for copies of any amendments to the constitution and by-laws to be filed within thirty days after adoption. No fee is imposed for such filing.

Every labor organization functioning in the State, having twenty-five or more members, is required annually on or before February 1 of the next succeeding year to file a report as of December 31 preceding the date of filing showing certain information as to the organization, including a financial report covering the preceding twelve months. At the time of the filing of such report the labor organization is required to pay a filing fee in the amount of $2.00.

No license is imposed or attempted to be imposed upon any labor organization as a condition to the right to function in the State; no license is issued or authorized to be issued; nor are its requirements

considered singly or in the aggregate tantamount to the imposition of a license.

The Alabama Supreme Court, in its opinion in this case, on this point, pertinently remarked:

> "In the first place, there is no license required. The fee of $2.00 is merely a regulatory and incidental matter, collected for the purpose of defraying the expense incidental to the furnishing of the forms and reports, and to the filing thereof with the Director."

The Act provides for the creation of a Department of Labor, under the administration of a Director of Labor who is required to investigate labor disputes and endeavor to promote peaceful and voluntary adjustments or settlements thereof, to the end that strikes, lockouts, boycotts, blacklists and discriminations may be avoided (Section 5(a)). It provides for the creation and functioning of boards of mediation for the settlement of labor disputes (Section 6).

The requirement for the filing with the Department by labor organizations of copies of their constitution and by-laws, and of annual financial statements and reports is a reasonable regulation, to furnish information to the Department to show what labor organizations are functioning in the State, where they are located, the name of their officers, the dates of election of officers, the number of its

members, as well as to acquaint the Director with the form or the organization, its field of operation, its rules and regulations, and other facts with respect to its actual operations which might be necessary or beneficial in administering the Act, or in making recommendations for amendments or changes therein. This is to the end that the Director and his assistants, representing the public interest in the enforcement of the Act in its various aspects, may be familiar with labor organizations and their activities, and may better be able to perform their functions.

These provisions follow the pattern adopted in many instances where State regulations are imposed upon businesses or activities affected with a public interest. The necessity for information as a basis for action on the part of any representative or mediary of the State is so obvious that further discussion or the citation of authorities or illustrations would seem unnecessary.

However, attention is called to the Act of Congress requiring the filing of financial reports by labor organizations with the Secretary of the Treasury even though expressly exempted from any tax. (U. S. Revenue Act of 1943, Section 112).

In the case of *Borden v. Sparks*, et als, 54 Fed. Sup. 300, in a hearing before three judges, on an application for a preliminary injunction, to enjoin

the enforcement of the Bradford Act, the Court in denying the injunction held:

> "The provisions of Section 7 seem to us reasonable and designed to obtain a legitimate end of a regulation by the State under its police power".

In attacking the validity or reasonableness of the regulations contained in Section 7 the burden of proof was upon the petitioners, and there is an utter lack of proof of any unreasonableness in fact. To the contrary, the petitioners have attempted to attack the reasonableness of these regulations upon the erroneous theory that compliance is tantamount to the imposition of a license. Both the Supreme Court of Alabama and the District Court of the United States have correctly and emphatically held to the contrary, and petitioners cite no apt authority in support of their insistence.

See:

Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740.

Howatt v. Kansas, 258 U. S. 181;

Wisconsin Labor Relations Board v. Ruepino Leather Company (WIS) 279 N.W. 673, 117 A.L.R. 398;

People ex rel. Bryant v. Zimmerman, 278 U.S. 63.

Cf. *Murdock v. Pa.*, 319 U.S. 105;

DeJonge v. Oregon, 299 U.S. 355.

The petitioners plead, and the record shows, that the payment of dues to a labor organization, in some instances, entitled the member to certain death, disability, funeral and pension benefits, in addition to economic benefits under any collective bargaining contract. (R. 68-69, 70, 73, 74, 75, 76, 77, 78). See also testimony of Petitioner B. E. Jones (R. 305, 306). Also see affidavit of William Greene (R. 259, 260).

Admittedly organizations engaged in the business of insurance are subject to regulation. (*Hardware Dealers Mut. Fire Ins. Co. v. Glidden*, 284 U. S. 151, and *Life & Casualty Insurance Company v. McCray*, 291 U. S. 566).

The reasonableness of the requirement of furnishing financial reports to the Department is illustrated in a similar requirement subsequently adopted by the Congress. The principle is supported in many authorities. The requirement that a labor organization furnish financial reports to its members is not shown to be unreasonable, but customary. (See affidavit of W. O. Hare, R. 238). These re-

quirements may well have been designed to deter or prevent any abuse or fraud involved in the management or expenditure of funds collected from many thousands of members, though in the aggregate their expenditure is necessarily entrusted to officers or agents of the organization.

(B) The Regulation Involves no Infringement of Free Speech or Assembly.

Petitioners are in error in contending that these provisions were intended to interfere with the exercise by any individual of his rights of free speech or assembly, or that such is the result of a compliance therewith. For instance, labor organizations already functioning in the State were allowed a period of sixty days within which to file a copy of the constitution and by-laws. No officer could refuse to accept the filing of these documents and the payment of no fee was involved.

As to labor organizations thereafter desiring to function in Alabama, the statute clearly contemplates the exercise of any and all rights of free speech or free assembly necessary or incident to the creation of the organization, including the adoption of its constitution and by-laws. It is only after the organization is complete and the constitution and by-laws have been adopted that any compliance is required, namely, the filing of a copy of such constitution and by-laws without the payment of any

fee; and the Director of Labor is not authorized to deny the filing.

Petitioners are in error in contending that there is no distinction between a labor union and its members, and consequently any regulation of a labor union infringes individual rights of free speech or assembly.

It has been held by this Court that, "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures * * * * * *". (*Hague v. C.I.O.*, 307 U. S. 496, 514.) See also *Northwestern Life Insurance Co. v. Riggs*, 203 U. S. 243, 255; *Western Turf Ass'n. v. Greenberg*, 204 U. S. 359, 363.

In the case of *Hague v. C. I. O.*, supra, the action involving the rights of freedom of speech and freedom of press was dismissed as to all but the individual defendants.

And, in the recent case of *United States v. Jasper White*, Vol. 88, L. Ed., Advance Sheet No. 16, page 1149, this Court denied to an individual representative or a member of a labor organization the protection of privileges or immunities against unreasonable search and seizure under the Fourth Amentment, and against self-incrimination under the Fifth Amendment, with respect to books and records of the labor union, of which he was a member, and, among other things; said:

"But individuals, when acting as representatives of a collective group, cannot be said to be exercising their personal rights and duties nor to be entitled to their purely personal privileges. Rather they assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers and they are bound by its obligations. In their official capacity, therefore, they have no privilege against self-incrimination." (p. 1152);
And further:

"Respondents could not claim the privilege on behalf of the union because the union did not itself possess such a privilege." (p. 1154.)

No instance or illustration of the manner in which these individual freedoms have in fact been hindered or infringed upon is shown in the record; nor did the Court below envision or consider any circumstances under which such individual rights would encounter infringement or interference. (R. 335, 336, 337, 338, and *Borden v. Sparks*, 54 Fed. Sup. 300. Cf. *Thomas v. Collins*, No. 14, October Term 1944).

The filing provisions in Section 7 of the Bradford Act are directed against the labor organization itself, and not the individual.

In *People ex rel. Bryant v. Zimmerman*, 278 U. S. 63, this Court held that the power of the State

to require the filing of information by an association includes the power to enforce such provision.

Petitioners are in error in their contention that enforcement of the filing provisions of Section 7, unlike the provisions of the Federal Act relating to the filing of financial reports (U. S. Revenue Act of 1943, Section 112) is directed against the individual members. Such is not the case. The penal provisions of Section 7 are directed against the officers or agents of a defaulting organization; and the penal provisions in Section 18 are specifically imposed only upon the organization itself for a violation by it of the Act.

The court below has not held that employees may not freely speak or assemble for the purpose of creating a labor organization. This right is expressly recognized throughout the Bradford Act, and in Section 13 it is provided that nothing in the Act shall "be so construed as to invade unlawfully the right to freedom of speech". The right to join labor organizations is specifically protected under Sections 8 and 18 of the Bradford Act.

Petitioners' contention that the provisions of Section 7 infringe the individual's right of free speech and assembly disregards the fact that labor organizations are affected with such a public interest as the State may, in the exercise of its police power, impose reasonable regulations, and of course may, by appropriate means, enforce compliance; and

that no member individually may complain if this results in a forfeiture of privileges otherwise enjoyed by the organization as such. So long as the organization of which he is a member is in default in compliance with a valid law, surely he may not complain of consequential effects upon individual rights which he as a member would otherwise be entitled to enjoy.

So long as the labor organization complied with the law—a reasonable regulation—there would be no occasion for the individual member to complain of any consequential infringement of his civil liberties as a member of the organization.

In the circumstances here involved, there is no direct interference with the civil rights of the individual. Such rights are not guaranteed to the organization. The law is not directed against the individual. It is therefore not necessary for the Court to consider any question of infringement of such individual civil rights before determining the validity of the regulation. If the regulation is reasonable and the enforcement thereof appropriate, no question of interference with civil rights of the individual members may intervene to prevent the consequences of the default or violation by the organization. But this would not prevent the individuals from creating another organization.

III

SECTION 15 OF THE BRADFORD ACT IS A REASONABLE EXERCISE OF THE POLICE POWER.

Section 15 reads as follows:

> "Section 15. It shall be unlawful for any labor organization, any labor organizer, any officer, agent, representative or member of any labor organization, or any other person, to collect, receive or demand, directly or indirectly from any person, any fee, assessment, or sum of money whatsover, as a work permit or as a condition for the privilege of work; provided, however, this shall not prevent the collection of initiation fees or dues."

The purpose of this Section is to prevent labor organizations from the practice of making a charge for the issuance of what is commonly known as a "work permit"; or from exacting any charge for the free exercise of the right or privilege to work. It expressly excludes charges imposed for initiation fees or dues.

This Section, in its purpose, is related to and is an expression of the declaration of policy incorporated in Section 1, recognizing the inherent "right to work". It is not designed to interfere in any

manner with the collection of initiation fees which a labor organization might impose or any amount imposed by it upon its members as dues.

This regulation was adopted to protect and enforce the fundamental right to work, without any design of interfering with the collection of "initiation fees or dues" by a labor organization. The issuance of work permits *per se* is not forbidden, but the making of any charge therefor in addition to initiation fees or dues.

The Legislature apparently knew of or foresaw abuses involved in permitting labor organizations to charge or exact any amount from members or non-members—over and above all initiation fees and dues—as a prerequisite or condition to the acceptance of employment. This right to work, equally with the right to join or not join a labor organization, the Legislature sought to guard and protect. It did not attempt to regulate the amount of any initiation fee or the amount of any dues which the members of a labor organization might impose upon themselves.

It will be noted that the amount of the charge for a working permit, as shown in the by-laws of the United Brotherhood of Carpenters and Joiners of America, is not definitely fixed in some instances. In Section 46 A, it is provided: "He shall pay the prevailing charge for a working permit in the jurisdiction where he goes to work." (R. 71).

In considering the constitutional validity of Section 15 of the Bradford Act, before application of the provision to a specific case involving its violation, the Court is not given an opportunity to consider the facts and circumstances involved. The case, as it relates to this section, must largely be considered upon assumed or hypothetical facts and assumptions. The burden was on the petitioners to show the unreasonableness and lack of any necessity for this regulation. However, the use or practice of issuing such permits and the amounts charged therefor was not discussed by any witness introduced by the petitioners.

It is charged that the terms are ambiguous, yet none of the witnesses for petitioners, all of whom were officials of labor organizations or members thereof, testified with respect to the practice, custom or necessity, the abuse or non-abuse, involved therein.

It was, therefore, not incumbent upon the respondents to introduce countervailing evidence of specific instances of the abuses and dangers involved in the practice, or of instances of interference thereby with the free exercise of the right to work.

If the regulation is found to be a reasonable exercise of the police power, as was determined by the court below, it follows, of course, that the State has the power to enforce the provision, notwithstanding the previous practice or usage or existing provisions in the constitution or by-laws of a labor or-

ganization permitting, providing for, or sanctioning the same. Since the amount which has actually been exacted or demanded by labor organizations of members or non-members for the temporary privilege of working is not shown in the record, the Court may well assume that the practice at times has been subject to abuse; that large and unreasonable exactions have interfered with the exercise of the right to work, and that such facts were known to the Legislature.

As expressed by Mr. Chief Justice Hughes, in *Home Building & Loan Association v. Blaisdell*, 290 U. S. 398, 448:

> "Whether the legislation is wise or unwise as a matter of policy is a question with which we are not concerned."

And this Court will assume the existence of facts supporting legislative judgment, unless such assumption is precluded by facts made known or by facts of which the Court takes judicial knowledge. (*United States v. Carolene Products Co.*, 304 U. S. 144, 152.)

IV

SECTION 16 OF THE BRADFORD ACT IS A REASONABLE EXERCISE OF THE POLICE POWERS, AND DOES NOT VIOLATE THE FOURTEENTH AMENDMENT OR INFRINGE THE RIGHTS OF FREE SPEECH OR ASSEMBLY GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

(A) The Regulation is a Reasonable Regulation of the Exercise of the Police Power.

Section 16 is designed to prevent labor organizations from accepting certain supervisory employees as members, when under the constitution and by-laws of the organization other workers or employees are admitted to membership therein. This regulation does not prohibit the organization or functioning of labor organizations composed of supervisory employees, but merely has the effect of requiring separate labor organizations for these two classes of employees.

The underlying reason supporting this classification, in the regulation of labor organizations, is the well recognized fact that supervisory employees are related to management. They are the representatives of management in dealing with other employees and employee labor organizations.

"No man can serve two masters; for either he will hate the one, and love the other; or else he will hold to the one, and despise the other." Matthew 6:24.

There are numerous decisions recognizing this distinction between supervisory employees and other employees or workers.

See:

United States v. Laudani, 320 U. S. 543, 547.

Humble Oil case, 16 N. L. R. B. 112.

J. I. Heinz Co. v. N. L. R. B., 311 U. S. 514.

International Association of Machinists v. N. L. R. B., 311 U. S. 72.

N. L. R. B. v. Cleveland Cliffs Iron Co., C. C. A. 6, February 11, 1943.

The Sherwin Williams Co., 37 N. L. R. B. No. 44.

Boeing Airplane Co., 46 N. L. R. B. No. 35.

Marshall Field & Co., 34 N. L. R. B. 1.

Rock Hill Printing & Finishing Co., 29 N. L. R. B. 673.

General Motors Sales Corp., 34 N. L. R. B. 1052.

United States Stamping Company, 1 N. L. R. B. 164.

Maryland Drydock Company, Case Nos. R. 5212 and 5214.

Union Collieries Coal Co., 41 N. L. R. B. 961.

The difference in classification between other employees and "executive," "administrative" and "professional" employees is recognized in the Fair Labor Standards Act, Section 13 (a) (Section 213, Title 29, U. S. C. A.). See "Labor Disputes and Collective Bargaining," Volume 2, by Ludwig Teller.

Since supervisory employees as distinguished from other employees are shown to fall within a distinct classificiation, they may be so treated; and separate regulations imposed upon labor organizations composed of supervisory employees in one instance or other employees in the other are, therefore, not arbitrary or capricious.

A broad latitude is allowed the Legislature in the matter of classification. See: *Borden's Farm*

Products Co., Inc. v. Baldwin, 293 U. S. 194; *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61; *Tigner v. State of Texas*, 310 U. S. 141; *Silver v. Silver*, 280 U. S. 117; *Bayside Fish Flour Co. v. Gentry*, 297 U. S. 422; *Metropolitan Casualty Ins. Co. of New York v. Brownell*, 294 U. S. 580.

A violation of this regulation, as in the case of Section 7, is enforceable only against the labor organization itself. (See Section 18 of the Act.)

It is expressly provided in Section 16 that it shall not be construed to invalidate any existing insurance contract.

The regulation in requiring separate labor organizations for supervisory employees and other employees is not only not shown to be unreasonable, but in accord with long established labor practice. There are two classes of employees involved. The one has a different relation than the other. Supervisory employees are more closely related to management, and responsible for carrying the policies of management into effect; and management is held responsible for their acts in a different manner and to a different degree. In fact, they must sit across the table in the negotiation of a collective bargaining agreement. It would seem reasonable therefore that they should be free from disciplinary action which might be imposed upon them by workers in a different classification. This was illustrated by the witness B. E. Jones, when he testified:

"As superintendent of a plant, I am subject to discipline by the union of which I am a member, should I violate any of the union rules." (R. 306.)

And again:

"I would say that in some of these plants some of the men in a supervisory capacity would feel, at times torn between loyalty to their employers and loyalty to their employees. This would probably happen when the man acting in a supervisory capacity was not in sympathy with the union." (R. 308.)

In the case of *N. L. R. B. v. Cleveland Cliffs Iron Co.*, C.C.A. 6, February 11, 1948, the Court held:

"Our analysis of controlling authorities leads to the conclusion that the employer must keep his hands off completely and exert no influence over his employees, directly or indirectly, in their efforts to organize for purposes of collective bargaining. This obligation is not met by passive neutrality of management itself. As previously pointed out, it requires that management shall not only preserve its own neutrality, but by effective action, insure the neutrality of supervisory employees and all who undertake to interfere under circumstances

where such interference may reasonably be interpreted as the voice of authority."

For these reasons, it has been held that a supervisory employee may be compelled to surrender any union affiliation.

The Sherwin Williams Co., 37 N. L. R. B. No 44.

Boeing Airplane Co., 46 N. L. R. B. No. 35.

Marshall Field & Co., 34 N. L. R. B. 1.

Rock Hill Printing & Finishing Co., 29 N. L. R. B. 673.

General Motors Sales Corporation, 34 N. L. R. B. 1052.

In the case of *Maryland Drydock Company*, Case Nos. R-5212 and R 5214, the National Labor Relations Board definitely ruled that supervisory employees should not be permitted to establish bargaining units under the Act, and were not entitled to the protection generally afforded to workers or other employees. In this connection, it was stated:

"We are of the opinion that in the present state of industrial administration and employee self-organization, the establishment of bargain-

ing units composed of supervisors exercising substantial managerial authority will impede the processes of collective bargaining, disrupt established managerial and production techniques, and militate against effectuation of the policies of the Act."

And further held:

"To hold that the National Labor Relations Act contemplated the representation of supervisory employees by the same organizations which might represent the subordinates would be to view the statute as repudiating the historic prohibition of the common law against fiduciaries serving conflicting interests."

In *United States v. Laudani*, 320 U. S. 543, 547, in holding a foreman subject to prosecution under the "Kickback Act", (41 U.S.C.A., Section 276b) it was said:

"Foremen vested with full power to employ and discharge subordinates could frustrate the objective of the Act just as effectively as could their employers, and foremen not given such broad powers might nevertheless be able to use their authority to accomplish the same result."

(B) The Regulation does not Infringe Free Speech or Assembly.

For the same reasons as hereinabove stated in discussing the provisions of Section 7 of the Bradford Act, there is no infringement of the individual rights of free speech or assembly involved in Section 16.

The regulation is imposed directly upon the labor organization itself and not upon the individual members.

V

NEITHER SECTION 7 NOR SECTION 16 DENIES RIGHTS GRANTED OR PROTECTED UNDER THE NATIONAL LABOR RELATIONS ACT.

The National Labor Relations Act is designed to guarantee or protect the right of collective bargaining, to regulate practices affecting the choosing of representatives, and the negotiation of collective bargaining agreements with respect to employees employed in commerce as defined in the Act. To that end, regulations are imposed upon employers to prevent what are defined as unfair labor practices.

The Federal Act imposes no regulations whatever upon labor organizations, nor does it attempt to define or regulate unfair labor practices between employees, whether members or non-members of labor organizations.

The Bradford Act likewise recognizes and protects the right of collective bargaining as to all employees in the state, whether engaged in commerce, as defined in the National Labor Relations Act, or engaged wholly in intrastate employment, not affected by the National Labor Relations Act. The Bradford Act does not prohibit the organization and functioning of any labor organization, or impose thereon any license or censorship. For the purpose of furnishing necessary or desirable information in the administration of the Act, it requires the filing of a copy of the constitution and by-laws adopted by the organization, and thereafter annually requires the filing of financial reports.

It is inconceivable that the Congress intended, by sanctioning the negotiation of collective bargaining agreements through labor organizations, to exclude such organizations from any form of state regulation under the police power.

As stated in *Allen Bradley Local v. Wisconsin Relations Board*, 315 U. S. 740, 749, "the intention of Congress to exclude states from asserting their police power must be clearly manifested". (See authorities there cited).

See also *Christoffel v. Wisconsin Employment Relations Board*, 243 Wisc. 332, 10 N. W. (2nd) 197, certiorari denied October 25, 1943, 64 S. Ct. Rep. 90.

Since Congress has not undertaken the regulation of labor organizations (other than such regulations as may be imposed upon railway labor organizations in consequence of certain exclusive remedies provided under the Railway Labor Act), we are unable to find in the Bradford Act any provision which might be said to conflict with the National Labor Relations Act or any provision which would prevent a labor organization functioning pursuant to the Bradford Act from performing any function which might be devolved upon it in the administration of the National Labor Relations Act.

It should not be overlooked, that while the National Labor Relations Act is limited to employment constituting what is defined as interstate commerce or as affecting interstate commerce, the Bradford Act has a separate field of operation with respect to employees engaged in intrastate employment not covered by the Federal Act, and as to labor organizations which may be formed by such employees.

This Court in numerous instances has recognized the right of the states in the exercise of their police power to impose regulations, so long as the field has not been preempted by Federal legislation, and there are many instances in which state regulation is sustained, even though in a sphere which might be subject to Federal legislation, but upon which subject Congress has not yet acted. (See *South Carolina State Highway Department v. Barnwell Bros. Inc.*, 303 U. S. 177; *U. S. v. Southeastern Underwriters Association*, L. Ed. Adv. Sheet, Vol.

88, No. 16, p. 1082.) Cf. *Thomas v. Collins*, No. 14, October Term 1944.

VI

THE EXEMPTION FROM THE TERMS OF THE BRADFORD ACT OF LABOR ORGANIZATIONS SUBJECT TO THE RAILWAY LABOR ACT DOES NOT VIOLATE THE FOURTEENTH AMENDMENT TO THE CONSTITION OF THE UNITED STATES.

In the enactment of the Bradford Act, the Legislature was authorized to adopt a classification of labor unions, so long as it was based upon reason or practical considerations, and was not purely arbitrary.

This rule was expressed by Mr. Chief Justice Hughes in *National Labor Relations Board v. Jones and Laughlin*, 301 U. S. 1, 17, as follows:

> "We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power."

And as said in *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 389, 400:

"The equal protection clause does not detract from the right of the state justly to exert its taxing power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.'"

Also see *People ex rel Bryant v. Zimmerman*, 278 U. S. 63.

The classification in this instance, resulting from the exclusion of labor organizations the employees of which are subject to the Railway Labor Act, is certainly not arbitrary, but was doubtless suggested and adopted in consequence of the fact that Congress had recognized substantial differences in enacting labor legislation dealing with Railway employees and other employees, the one in the Railway Labor Act and the other in the National Labor Relations Act.

This distinction and the substantial differences involved, regardless of some similarities, may be found not only in a comparison of the two Acts, but in the long history of the development of the Railway Labor Act.

In the case of *General Committee v. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, 328, 329, it was said:

"The present Act is the product of some fifty years of evolution. For many years the only sanctions under the various Congressional enactments in this field were publicity and public opinion."

And again, in discussing the fact that Congress had eventually excluded judicial determination of certain issues and, in lieu thereof, provided different remedies, the Court said (Page 337):

"However wide may be the range of jurisdictional disputes embraced within § 2, Ninth, Congress did not select the courts to resolve them. To the contrary; it fashioned an administrative remedy and left that group of disputes to the National Mediation Board. If the present dispute falls within § 2, Ninth, the administrative remedy is exclusive."

There are substantial differences in labor relations as regulated under the Railway Labor Act, than as affected or regulated by the National Labor Relations Act, specific instances of which we do not deem it necessary to discuss. (See *Steele v. L. & N. R. Co.*, 65 S. Ct. 226)

It has been decided that, in the enactment of the National Labor Relations Act, Congress did not preempt the field of legislation but had left room for State regulation, particularly as to the conduct of employees, and as to the regulation of labor or-

ganizations themselves, so long as not conflicting with the provisions of the National Labor Relations Act, or orders adopted pursuant thereto. For these and other reasons there remained a field in which State regulation of labor relations might be exercised without conflicting with the National Labor Relations Act. This was recognized in the following cases:

Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740;

Thomas v. Collins, No. 14, October Term, 1944;

But, from the decisions of this Court construing the Railway Labor Act, it would appear that Congress has preempted the field, as concluded by the court below.

And, there is a field of operation for the Bradford Act as it relates to labor relations affecting persons employed by employers engaged exclusively in intrastate commerce, and organizations of such employees, not within the influence of either the Railway Labor Act or the National Labor Relations Act.

In the adoption of the National Labor Relations Act, the Congress expressly excluded or exempted "persons subject to" Sections 151-163, Title 45, U.S.C.A.—the Railway Labor Act.

VII

SECTIONS 15 AND 16 OF THE BRADFORD ACT ARE NOT SO UNCERTAIN OR AMBIGUOUS IN THEIR TERMS AS TO CONSTITUTE A DENIAL OF DUE PROCESS OF LAW.

(A) The Terms "Work Permit" as used in Section 15 have a Definite Meaning.

The record shows that the terms "work permit" or "working permit" are well understood in labor circles. These terms appear in the by-laws of some of the petitioner organizations, and which we have hereinabove discussed. The validity of such a regulation, in its very nature, may not well be determined without a consideration of the facts and circumstances involved in the prohibited practice. On this point the court below commented:

> "Whether or not certain practices to which counsel refer are to be construed as coming within the provisions of the Act are questions which will arise when the proper case is presented." (R. 349.)

See *Watson v. Buck*, 313 U. S. 387.

No witness for the petitioners testified that these terms were not well understood by labor or

ganizations. In fact, they appear to have been literally borrowed from the usage thereof by labor organizations. It is inconceivable, therefore, that a labor organization, in a prosecution for a violation of this regulation, could in good faith plead ignorance of their meaning or of the nature and cause of the accusation.

(B) The Terms "Executive, Administrative, Professional, or Supervisory Employee" as used in Section 16 of the Bradford Act have a Definite Meaning.

The terms "executive", "administrative", "professional" and "supervisory" employees or persons employed in such capacities are terms well understood in labor circles, decisions, orders and legislation relating to the employment of labor and labor relations generally. While, in some instances, questions of fact might well arise as to whether an employee is engaged in a supervisory capacity within the meaning of some law or regulation adopted thereunder, no instance of doubt is presented in the record of this cause. The petitioner B. E. Jones testified that he was the Superintendent of the plant (R. 306). The court below had no specific instance presented which gave rise to any doubt or ambiguity in the application of these terms.

The court below did not construe the exact meaning of the terms used in Section 16 of the Bradford Act, for the obvious reason that the record did

not present an instance of the application of such terms in a manner which called for an interpretation. For these reasons this Court, in adhering to its rule that it will not pass upon the constitutionality of a State act prior to a construction thereof by the Supreme Court, of the State, may well decline an invitation to express an opinion on this point in advance of a more definite construction by the Supreme Court of Alabama.

See *Spector Motor Service v. McLaughlin*, 56 S. Ct. (Advance Sheets) 151.

While it is true that in the Fair Labor Standards Act, in using the terms "executive", "administrative" and "professional", provision is made for such terms to be defined and delimited by regulations of the Administrator (Title 29, Section 213, U.S.C.A.), the court below has not so construed the meaning of this State statute as to cast doubt upon its application nor has the court below passed upon the power or authority of the Director of the Department of Labor to construe these terms in the administration of the Act. For instance, the court below may construe that, unless a person is employed exclusively and strictly in an administrative, executive, professional or supervisory capacity, his acceptance into membership of the labor organization would not constitute an offense. We submit that the words used by the Legislature have a well understood meaning.

"Primarily—that is, in the absence of anything in the context to the contrary—common or popular words are to be understood in a popular sense; common law words according to their sense in the common law; and technical words pertaining to any science, art or trade, in a technical sense." *Mobile Dry Docks Co. v. The City of Mobile*, 146 Ala. 198, 208, 40 So. 205.

The uncertainty, if any, is one of degree, and a court, in the enforcement of this provision in a specific instance, would be required to apply a strict construction of such provision, and it does not appear from the record that this would result in establishing such uncertainty as to constitute a violation of due process of law. Counsel for petitioners erroneously assume that the enforcement of these provisions would be against the employee or member of the labor organization, whereas the regulation is only imposed upon the organization and only enforceable against it (See Section 18 of the Bradford Act).

The case of *Lanzetta v. State of New Jersey*, 306 U. S. 451, cited by petitioners, is clearly distinguishable. The terms there under consideration were not sufficient to inform a defendant of the alleged offense.

The case of *United States v. Reese*, 92 U. S. 214, cited by petitioners, involved an act of Congress

which was not shown to be limited to the enforcement of constitutional powers delegated to the Federal Government, in addition to uncertainties in the language used. This case may be clearly distinguished from any question which might be interposed with respect to the validity of Section 16 of the Bradford Act.

The case of *United States v. Cohen Grocery Co.*, 255 U. S. 81, cited by petitioners, involved a construction of an act of Congress making it unlawful for any person "to make any unjust or unreasonable rate of charge in handling or dealing in or with any necessaries * * *", which statute was held to be so obviously vague and uncertain as to be contrary to the due process clause in the Fifth Amendment to the Constitution of the United States.

The cases cited by petitioners do not support their contentions with respect to any invalidity by reason of uncertainty or ambiguity in the description of the offense created by either Section 15 or Section 16 of the Bradford Act.

CONCLUSION

For the reasons herein discussed, it does not appear that there is a case or controversy presented within the power and jurisdiction of this Court under Article III, Section 2 of the Constitution, in which it is necessary for this Court to determine a constitutional question with respect to either Sections 7, 15 or 16 of the Bradford Act. However, if a case or controversy is determined to be presented to this Court, we submit that the petitioners have failed to discharge the burden of showing any constitutional invalidity; and in the light of such facts and circumstances as are presented in the record, the legislation in its several aspects is shown to be a reasonable exercise of the police power, and therefore valid. For these reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF ON BEHALF OF THE WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE*

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INDEX

Subject Index

PAGE

Brief on behalf of the Workers Defense League as *amicus curiae* 1

Synopsis of Sections of the Act 2

Argument 3

I. Sections 7 and 16 are a denial of those rights guaranteed by the First Amendment to the United States Constitution and protected against invasion by the States under the Fourteenth Amendment to the United States Constitution 3

(a) Section 7 3

(b) Section 16 7

II. (a) Section 15 is discriminatory and is a denial to unions of the protection under the Fourteenth Amendment to the United States Constitution 8

(b) The term "work permits" is so vague and nebulous as to require speculation as to its meaning 10

III. Sections 7 and 16 conflict with and deprive petitioners of rights expressly granted to them in the National Labor Relations Act 10

Conclusion 14

Table of Cases Cited

	PAGE
Allen Bradley, etc. v. Wisconsin Employment Relations Board, 315 U. S. 740	11, 12
American Steel Foundries v. Tri-City Central Council, 257 U. S. 184, 209	4
Bell, In re, 190 Cal. 2nd 488	10
Bryant v. Zimmerman, 278 U. S. 63	6
Cantwell v. Conn, 310 U. S. 296	4, 5
Carpenter & Joiners Union v. Ritters Cafe, 315 U. S. 722	6
Follett v. McCormick, 321 U. S. 573	6
Gibbons v. Ogden, 9 Wheat. (U. S.) 1	11
Hague v. CIO, 307 U. S. 496	3
Herndon v. Lowry, 301 U. S. 242	4
International Text Book Co. v. Pigg, 217 U. S. 91, 110	4
Jones v. Opelika, 316 U. S. 584, overruled 319 U. S. 103	6
Lanzetta v. New Jersey, 306 U. S. 451	10
Lovell v. Griffin, 303 U. S. 444	6
Manchester v. Leiby, 117 Fed. 2nd 661, cert. den. 313 U. S. 562	5
Murdock v. Pennsylvania, 319 U. S. 105	6
Napier v. Atlantic Coastline Railroad Co., 272 U. S. 605	11, 12
NLRB v. Jones & Laughlin Steel Corp., 301 U. S. 1, 33	4
Nebbia v. New York, 291 U. S. 502	6

PAGE

Schenck v. U. S., 249 U. S. 47 4

Schneider v. State, 308 U. S. 147 ..... 3, 5, 7

Stromberg v. California, 283 U. S. 359 10

Ex Parte Thomas, 141 Texas 591 6

Thomas v. Collins, —— U. S. ——, 65 S. Ct. 315 ..... 3, 4, 5

Thornhill v. Alabama, 310 U. S. 88 ..... 3, 4

U. S. v. Carolene Products, 304 U. S. 144, 152 n. 4 5

West Virginia v. Barnette, 319 U. S. 624 5

Yick Wo v. Hopkins, 118 U. S. 356 9

Statutes Cited

Act of Congress:

49 Stat. 449 10

49 Stat. 452 11

49 Stat. 453 13

Alabama Acts 1943, page 253 1

McKinney's Consolidated Laws of New York, Volume 8, Sections 56-58 7

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ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF ON BEHALF OF THE WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE*

The Workers Defense League, a non-profit organization with several thousand members in various parts of the United States, dedicated to the defense of the legal and constitutional rights of the people of the United States, and interested in the extension of democracy, with the written consent of the parties herein, asks leave of this honorable court to appear as amicus curiae and urge the unconstitutionality of Sections 7, 15 and 16 of the Alabama statute known as the Bradford Act (Alabama Acts 1943, p. 253) on review before the court, as being embodiments of undemocratic principles.

Synopsis of Sections of the Act

The Supreme Court of Alabama has upheld the constitutionality of Sections 7, 15 and 16 of the Broadford Act. Section 7 provides that all labor organizations "functioning" within Alabama in order to function must file a copy of its constitution and by-laws with the Department of Labor. Thereafter annually the Union must file with the Director of Labor a statement showing

1. the name of the organization
2. the location of its principal office in Alabama
3. the names, addresses, salaries, bonuses, etc. of the principal officers of the Union
4. the date of the regular elections of officers of the Union
5. the number of its paid up members
6. a complete financial statement showing dues, fines, assessments together with all disbursements with the names of recipients and the purpose therefor
7. a complete statement of all the property of the Union including money on hand.

A mailing fee of two dollars is required to file this statement. The reports are to be made available to the Governor of the State, and a copy is to be sent to each member of the Union.

Section 15 provides that it shall be unlawful for any union or officer to collect, demand or receive any money from a person as a "work permit" specifically excepting initiation fees or dues.

Section 16 provides that it is unlawful for any executive administrative, professional or supervisory employee to become a member of a union which admits to membership persons other than those in these classes.

ARGUMENT

I

Sections 7 and 16 are a denial of those rights guaranteed by the first amendment to the United States Constitution and protected against invasion by the States under the Fourteenth Amendment to the United States Constitution.

(A) Section 7.

Under the guise of protecting the public interest (Section 1 of the Bradford Act) the Legislature of Alabama has in this section passed one of the most drastic pieces of anti-union legislation ever enacted by any Legislature in the United States. The rights of any particular union to function in Alabama is denied unless certain conditions set forth by the State Legislature as set forth above on page 2 are complied with. This means that the right to picket, constitutionally protected by this court in *Thornhill v. Alabama*, 310 U. S. 88, the right to distribute leaflets, similarly protected in *Schneider v. State* and the cases considered simultaneously 308 U. S. 147, the right to hold meetings and discuss freely all matters, *Hague v. CIO*, 307 U. S. 496, the right to solicit members to speak in favor of joining a union, protected by this court in *Thomas v. Collins*, —— U. S. ——, 65 S. Ct. 315, together with many of the other functions which are of the very essence of unions are forbidden to the Union.

Whatever meaning "function" may have, and we do not propose to enter into any etymological discussion of the word, it certainly includes the functions of a union set forth above and constitutionally guaranteed by this court. The section in question licenses that right.

Although no formal license is required by Section 7, none is necessary in order to create the effect of one.

Without the permission of the State, the Union may not function. This meaning of "license" is made clear in the well-known case of *International Text-Book Co.* v. *Pigg*, 217 U. S. 91, where this Court stated at page 110:

> "It is true that the statute does not, in terms, require the corporation of another state engaged in interstate commerce to take out what is technically 'a license' to transact its business in Kansas. But it denies all authority to do business in Kansas unless the corporation makes, delivers and files a 'statement' of the kind mentioned in § 1283. The effect of such requirement is practically the same as if a formal license was required as a condition precedent to the right to do such business."

This Court there said that, since the right to engage in interstate commerce was constitutionally protected, the State had no power to license such a right and held the Act unconstitutional. Similarly the right of unions to carry on the activities set forth above has also been constitutionally guaranteed. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33; *American Steel Foundries* v. *Tri-City Central Council*, 257 U. S. 184, 209; *Thornhill* v. *Alabama*, *supra*. A State similarly has no power to "license" such rights.

While this is not an unconditional and absolute right, *Schenck* v. *U. S.*, 249 U. S. 47, without a showing of a clear and present danger, the right of free speech, press and assembly may not be licensed, nor can these bases of our existence be subject to the whims of the Legislature. *Cantwell* v. *Conn.*, 310 U. S. 296; *Thornhill* v. *Ala.*, *supra*; *Herndon* v. *Lowry*, 301 U. S. 242.

An intrusion upon these rights is valid only if there is a grave and impending public danger. *Thomas* v. *Collins*, *supra*. Thus the Court below was in error in asserting that the statute required no license in order to exercise the rights under the first amendment (R. 338).

The Court below further argued (R. 322) that the statute should be indulged with every presumption of validity in

its favor. While this may be a cardinal tenet in the constitutional interpretation of ordinary legislative power, it is well recognized now by this Court that when the question is one of the power of a legislature to abridge the guaranties of the first amendment, and protected against stage action by the fourteenth, no such presumption exists. *Schneider* v. *State*, 308 U. S. 147; *U. S.* v. *Carolene Products*, 304 U. S. 144, 152 n. 4; *West Virginia* v. *Barnette*, 319 U. S. 624; *Thomas* v. *Collins*, *supra*. The mere pronouncement by the State Legislature that it desires to protect the public is not sufficient to forestall attack upon the constitutionality of the enactment. See *U. S.* v. *Carolene Products*, *supra*, p. 152.

Unlike the ordinance in *Manchester* v. *Leiby*, 117 Fed. (2d) 661, cert. den. 313 U. S. 562, Section 7 is no mere identification statute. Section 1 of this statute clearly states the purpose is " * * * to regulate the affairs of labor organizations * * * ". When counsel for petitioners attempted to show that no findings of fact were made by the Legislature nor even hearings held regarding the Bradford Act, the Court excluded such testimony (R. 296). Under these circumstances, it cannot be said an evil is presented which warrants the extreme penalty set forth in the statute. The information required in Section 7 is entirely inconsistent with mere identification. In the *Thomas* case, *supra*, wherein this Court reversed the Texas Courts, only the organizer was circumscribed, and not the whole Union as in the case before us. This is therefore a far greater encroachment upon the rights of speech and assembly and can have no relation to the area of proper police protection.

The statute is general with no apparent substantial interest of the people of the State of Alabama to protect. It is not drawn narrowly to punish specific conduct constitution, a clear and present danger to the State. *Cantwell* v. *Conn.*, *supra*.

At R. 327-8 the Court alluded to the conflict of State Police power and the right of the individual over his private affairs, concluding that there are instances where the private right must give way. But the quotation offered by the Court from *Nebbia* v. *New York*, 291 U. S. 502, clearly states that " * * * a regulation valid for one sort of business * * * may be invalid for another sort * * * ". Unions are not mere commercial organizations. They are non-profit, partly educational and serve a valuable function in modern society. Regulations proper for profit making corporations are not necessarily valid for unions.

Whether unions are on the same high constitutional level as religious organizations is of no relevance at this time. In the Jehovah's Witnesses cases it was shown that the solicitors involved received compensation directly in proportion to the literature distributed. *Follett* v. *McCormick*, 321 U. S. 573; *Murdock* v. *Pennsylvania*, 319 U. S. 105. To no avail were the arguments there that this fact took away the preferred status of the Jehovah's Witnesses as a religious organization. Similarly, although unions collect dues and pay salaries they are not profit-making commercial organizations. Regulations which may be applicable to purely commercial organizations are not proper as applied to groups such as unions. See *Lorell* v. *Griffin*, 303 U. S. 444.

It should be noted that the Court below in asserting that there are instances where private rights must yield to the State power cited in support of this proposition *Ex Parte Thomas*, 141 Tex. 591, which was reversed by this Court recently; *Jones* v. *Opelika*, 316 U. S. 584, which was overruled on rehearing in 319 U. S. 103; *Carpenter & Joiners Union* v. *Ritters Cafe*, 315 U. S. 722, limiting secondary picketing, clearly has no relation to the case at bar; *Bryant* v. *Zimmerman*, 278 U. S. 63, is of no merit because the statute there aimed at the protection of the State against the Ku Klux Klan and other secret societies which unquestionably constituted a special menace to society.

By requiring disclosure, the State was acting properly within its police power. But even this statute, which prescribed penalties for violations to a serious threat to the peace of our way of life applied no previous restraint. *McKinney's Consolidated Laws of New York*, Vol. 8, §§ 53-56.

(B) *Section 16.*

While Section 16 is more narrowly drawn than Section 7 in that it prohibits a single act, it violates the First Amendment on its face by preventing the free right of association of all citizens to join organizations of their own choice so long as the organization itself is not illegal. No such claim of illegality, of course, is or can be made of unions.

The Court below says (R. 350), "The question simply is as to whether or not this regulation is within the bounds of reason or is it arbitrary and capricious?" This is not the question. Rather the question is whether this section of Bradford Act violates the rights guaranteed under the First Amendment to the United States Constitution and protected against arbitrary State action by the Fourteenth Amendment. Whether proper or not this section clearly abridges these guaranteed rights, thus there is no presumption of validity.

> "In every case, therefore, where legislative abridgement of the rights is asserted, the courts should be astute to examine the effects of the challenged legislation." *Schneider* v. *State, supra,* at p. 161.

While it may be true that certain unions exclude foremen from its membership (R. 269-289), under no circumstances would this fact give constitutional validity to such a legislative restriction. The Court below asserted that certain unions do not admit supervisory employees to membership (R. 350). But the Carpenters Union does not fear its supervisory members will betray the interest of the union. Petitioner B. E. Jones is such a supervisory

employee (R. 11) and is a member of the United Brotherhood of Carpenters and Joiners (R. 4). If this section is upheld he must therefore withdraw from the union of his choice. The right of employees to join unions of their own choice is a fundamental right guaranteed by the United States Constitution.

By enacting such legislation, the State is promoting industrial strife instead of healing it, as professed. One set of employees are set off against another. Because certain unions feel that supervisory employees may be subject to pressure from management and thus exclude such employees from membership does not sustain legislative fiat denying the right of certain employees to join unions of their own free choice.

II

(A) Section 15 is discriminatory and is a denial to unions of the protection under the Fourteenth Amendment to the United States Constitution.

As with the sections previously discussed there is no statement anywhere either in the record or in the statute which indicates what interest of the state is being protected. The court below refers to general language in the preamble: "The right to live involves the right to work." But nowhere is the assertion made or is there a finding that unions by this nebulous term "work permits" are endangering the right to live. When the State asserts its police power, it may not destroy indiscriminately all popular rights in its way. If any unions or their officials are guilty of wrongful practices, which is nowhere shown or alleged to be the fact, they may be prosecuted under the penal law. Why unions should be singled out for this severe restriction is not made clear. Such a provision thus discriminates against unions and their members without any just cause asserted. As such, Section 15 is a denial by the state of

Alabama of equal protection of the law guaranteed by the Fourteenth Amendment. *Yick Wo* v. *Hopkins*, 118 U. S. 356. As in the cited case, a particular class is set up for discrimination.

In addition Section 15 is a deprivation of property without due process of law. Persons who work under union contracts or auspices obtain the benefit of the union efforts to better their lot. The police power of the State cannot abruptly deprive a union from assessing a fee under these conditions without showing an interest to protect. This section prevents a union from collecting fees from non-union employees whom the Union permits to work under the benefits of a union agreement. The union members whose dues have supported the efforts of the Union to obtain a union contract are thus discriminated against in favor of non-union people who have not supported the Union. The latter obtain the benefit of the union contract without incurring any of the obligations. This is of particular importance in war time when, because of the shortage, the Union may not be able to supply a particular employer with sufficient union labor. Since the work must be done, non-union persons are permitted to work. When there is no showing of improper acts, fraud, etc., it is only proper that these people make a contribution to the Union which obtained the favorable conditions under which they work.

While property rights of unions or those of anyone else are not supreme over the authority of the State, they cannot be destroyed without an interest of the State to protect. Furthermore, fraud and other improper acts are punishable by the criminal statutes designed for that purpose. Here, the Legislature apparently did not even consider whether there were improper activities. Considering these facts, it must be said that this section is a deprivation of property without due process of law and is a denial of equal protection of the laws guaranteed against improper state action by the Fourteenth Amendment to the United States Constitution.

(B) The term "work permits" is so vague and nebulous as to require speculation as to its meaning.

With a criminal penalty hanging overhead, persons may not be required at the peril of life, liberty or property to guess as to the possible violation of a statute preventing the collection of sums for "work permits". See *Stromberg* v. *California*, 283 U. S. 359 and *In re Bell*, 190 Cal. 2d 488 As this court made abundantly clear in *Lanzetta* v. *New Jersey*, 306 U. S. 451, there must be a definition of the act made criminal where no definition exists in any other statute. The fact that the preamble argues that the "right to live involves the right to work" is not a finding by the Legislature that a substantial interest of people is at stake. How can these petitioners know when they are violating this act? It is not sufficient to say, as does the court below, that whether a specific act violates this section can be determined when the issue arises. At that time it will be too late, for the criminal penalties will have already been incurred. It is respectfully submitted that such a section violates the most fundamental rights of democratic government.

III

Sections 7 and 16 conflict with and deprive petitioners of rights expressly granted to them in the National Labor Relations Act.

The discussion above has shown that Section 7 denies to petitioners the right to self-organization into unions and the benefits of collective bargaining except upon the compliance with conditions laid down by the Legislature of the State of Alabama. These rights and these benefits have been expressly granted to the petitioners and all other employees by the National Labor Relations Act (49 Stat. 449).

It has been repeatedly held by this court from the earliest days of our Federal system that where in any field Congress has properly legislated, further legislation by the individual States is precluded. *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1. This doctrine has been extended to include cases in which the State has legislated in a manner and in a portion of the field where Congress could have but did not for its own reasons legislate. *Napier* v. *Atlantic Coastline R. Co.*, 272 U. S. 605.

In the instant case, Congress has expressly provided in the Federal Act "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." (49 Stat. 452). Section 7 of the Broadford Act, by forbidding a union to "function" unless the provisions of the act are complied with thus denies to a union the right to bargain collectively and denies to the members thereof the right to "engage in concerted activities" all of which activities are encompassed in the meaning of the word "function" as applied to labor unions.

The lower court sought to reconcile the conflict between the State and Federal Acts by citing the case of *Allen-Bradley, etc.* v. *Wisconsin Employment Relations Board*, 315 U. S. 740. At the outset, it should be pointed out that this court stated in that opinion, that "if the order of the State Board affected the status of the employees or if it caused forfeiture of collective bargaining rights, a distinctly different question would arise" (p. 751).

In the instant case, the issue is clearly one of whether the Act would deprive the petitioners of the right to collective bargaining. Under the State Law, assuming employees could join a union, the Union would be forbidden under penalty of fine and imprisonment from attempting to negotiate a contract with an employer or seeking relief before the National Labor Relations Board or engaging

in any of the activities which are included within the concept of collective bargaining.

The lower court further based its decision on this question upon the police power of the State which it was claimed constituted an exception to the rule of paramount legislative authority, and to this effect again referred to the *Allen-Bradley* case. The *Allen-Bradley* case was decided on the ground that the State had the power to prevent disturbances and breaches of the peace occasioned by disorderly picketing. Here, under the guise of the exercise of its police power, the State seeks to prevent the rights granted under the Federal Act which, as shown above, bear no relationship whatever to the evil, if any, which the Act seeks to prevent.

In *Napier* v. *Atlantic Coastline R. Co.*, supra, this court held that where Congress delegated to the Interstate Commerce Commission the power to determine the safety appliances to be used on railroad trains, no State even under the police power could require further appliances not ordered by the Commission.

In forbidding supervisory employees from becoming members in unions composed also of non-supervisory employees, the Act also deprives petitioners of the right as employees to join with other employees and to secure the benefits of unionization and collective bargaining. The court below sought to justify this section of the Act on the ground that reasonable classification was proper. Without entering into a discussion as to whether this did or did not constitute a reasonable classification, it is respectfully submitted that under the authority cited above, Congressional legislation removed from the State the power to make any distinction between employees, reasonable or otherwise. Congress has decided that any employee may join with any other employee regardless of activity, salary range or any other factor, for their mutual benefit and protection in industrial relations.

The fact that in some cases, the National Labor Relations Board may have excluded supervisory and administrative employees from a bargaining unit has no bearing upon the instant case. Firstly, the discretion to determine the bargaining unit was vested in the National Labor Relations Board pursuant to Section 9 of the Federal Act, 49 Stat. 453. Section 17 of the Bradford Act is an exercise of such discretion by the State and would, in a given case, contravene the decisions of the National Labor Relations Board pursuant to the authority vested in it by Congress.

Secondly, there are numerous cases in which the Board has *included* supervisory and administrative employees in the bargaining unit. Each case is to be determined upon the situation existing in a particular plant or factory. In the cases cited by the court below, the question was not whether the supervisory employees were properly part of the bargaining unit, but rather whether the company through certain of its supervisory employees sought to exert undue pressure to prevent the formation of a non-company union. It is respectfully submitted that the fact that these were supervisory employees was merely fortuitous and the decision would have been the same had the company sought to exert its pressure through certain non-supervisory employees friendly to the company and antagonistic to the Union.

It is respectfully submitted that Sections 7 and 16 of the Bradford Act, in licensing the right to join a labor union and to bargain collectively, have contravened the National Labor Relations Act and are in violation of Article VI of the Constitution.

CONCLUSION

It is respectfully submitted that Sections 7, 15 and 16 are a denial to petitioners of those rights guaranteed under the First Amendment to the United States Constitution, and protected against arbitrary state action by the Fourteenth Amendment.

Respectfully submitted,

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OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

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INDEX

	PAGE
STATEMENT	1
I—Section 7 violates the Fourteenth Amendment to the United States Constitution by imposing a previous general restraint on the civil rights of speech and assemblage	3
II—Section 16 violates the right of employees to assemble by making it unlawful for certain employees to be union members	10
III—Section 16 violates the "due process" clause of the Fourteenth Amendment because of its vagueness	12
CONCLUSION	14

Table of Cases Cited

American Federation of Labor, et al. *v.* Reilly, —— P. 2d —— (Colo. Sup. Ct. 1944)	7, 9
American Federation of Labor *v.* Swing, 312 U. S. 321	6
American Steel Foundries *v.* Tri-City Central Trades Council, 257 U. S. 184, 209	5
DeJonge *v.* Oregon, 299 U. S. 353	5
Grosjean *v.* American Press Company, 297 U. S. 233	4
Fairfield Lumber & Supply Co., 57 NLRB, No. 255	13
Floyd D. Penrod & Sons Tool & Engineering Co., 59 NLRB, No. 29	13
Hague *v.* Committee for Industrial Organization, 307 U. S. 496	5
Herndon *v.* Lowry, 301 U. S. 242	5

PAGE

International Text Book Company *v.* Pigg, 217 U. S. 91, 108 4

Jones & Laughlin Ore Co., 59 NLRB, No. 38 13
Joseph James *v.* Marinship Corp., et al., decided Dec. 30, 1944, California Supreme Court, No. 17,015 ..... 5, 11

Land O'Lakes Creameries, Inc., 53 NLRB, No. 170 13
Lanzetta *v.* New Jersey, 306 U. S. 451 13
Lovell *v.* Griffin, 303 U. S. 444 ..... 4, 6

Matter of Maryland Drydock Co., 49 NLRB, No. 105 12
Mayer *v.* Journeymen Stonecutters Ass'n, 47 N. J. Eq. 519 11
McKane *v.* Adams, 123 N. Y. 609 11
Murdock *v.* Pennsylvania, 319 U. S. 105 4

National Labor Relations Board *v.* Jones & Laughlin Steel Corporation, 301 U. S. 1, 33 ..... 5, 6, 10
Nixon *v.* Condon, 286 U. S. 73 10-11
Nixon *v.* Herndon, 273 U. S. 536 ..... 10, 11

Richardson *v.* Union Congregational Society, 58 N. H. 187 11
H. L. Ruggles & Co., 58 NLRB, No. 62 13

Schneider *v.* New Jersey, 308 U. S. 147 ..... 4, 6
Senn *v.* Tile Layers Union, 301 U. S. 468, 478 6
Simons *v.* Berry, 210 App. Div. (N. Y.) 90, 205 N. Y. S. 442 11
State *v.* Butterworth, 104 N. J. L. 579, 142 Atl. 57, 58, A. L. R. 744 5
Steel *v.* Louisville & Nashville Railroad Company, et al., decided by this Court on December 18, 1944, Docket No. 45 11

Texas & N. O. Railway Co. *v.* Brotherhood of Railway and Steamship Clerks, 281 U. S. 548 ..... 5, 6
Thomas *v.* Collins (decided January 8, 1945; Docket No. 14) 2, 7
Thornhill *v.* Alabama, 310 U. S. 88 ..... 4, 6

PAGE

United States *v.* Cohen Grocery Co., 255 U. S. 81, 89 13
United States *v.* Reese, 92 U. S. 214 13

Virginian Railway Co. *v.* System Federation, *No. 40*, 300 U. S. 515 6

Wallace Corporation *v.* National Labor Relations Board, December 18, 1944, Docket Nos. 66 and 67 11
Whitney *v.* California, 274 U. S. 357, 372 5

Statutes and Miscellaneous Cited.

Bradford Act of 1943:
Section 7 ..... 2, 3, 4, 7, 9, 14
Section 16 ..... 2, 10, 11, 12, 14
Section 18 ..... 3, 12

Fair Labor Standards Act, Section 13 (a)(1) 13

Report and Recommendations of Presiding Officer in matter of Proposed Amendments to Wage and Hour Division Regulation 541 (CCH Labor Law Service, Par. 31, 302) 13

United States Constitution:
First Amendment 4, 9
Fifth Amendment 13
Fourteenth Amendment 3, 4, 7, 9, 11, 12, 13

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

Statement

The American Civil Liberties Union is a national organization devoted to the protection of civil liberties in general and of the Federal and the several State Bills of Rights in particular. It has members who reside in and are citizens of the various States, including the State

of Alabama. The organization endeavors to defend civil liberties from the viewpoint of the general public. As such, it does not express the views of any particular group or class, political, economic, social or religious. It has come to the aid of employers as well as of labor when it was of the opinion that the civil liberties of either were being threatened. The American Civil Liberties Union was founded upon the principle that where the civil liberties of one group or even of one person are threatened, the freedom of all is endangered. We agree with the following view expressed by this Court in the recent case of *Thomas* v. *Collins* (decided January 8, 1945; Docket No. 14), in striking down as unconstitutional a labor organizer licensing provision in a statute similar to the one here involved:

> "There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty."

It is with this larger view that we are concerned. We therefore file this brief as *amicus curiae* because we believe that Sections 7 and 16 of the Bradford Act (Act of 1943, p. 253), which are here under review, violate the constitutional guaranties of freedom of speech, press, assembly, and petition, and those against deprivation of liberty without due process of law.

I

Section 7 violates the Fourteenth Amendment to the United States Constitution by imposing a previous general restraint on the civil rights of speech and assemblage.

Section 7 of the Bradford Act makes it unlawful—subject to civil and criminal penalties under Section 18—for any labor organization to *function* in the State of Alabama unless such labor organization

> (1) files with the State Department of Labor a copy of its constitution and by-laws and the constitution and by-laws of its parent organization, if any, and all amendments thereto;
>
> (2) files annually with each member of the organization and with the Director of the Department of Labor a verified written report giving the names and addresses of its officers, and the salaries and other remuneration paid to each; the date of regular election of officers; the number of paid-up members; and a complete financial statement of assets and monies received and detailed list of disbursements;
>
> (3) pays an annual filing fee of two dollars.

These provisions are violative of fundamental civil rights guaranteed by the Fourteenth Amendment against infringement by the States.

By prohibiting a labor union from *functioning* within Alabama unless it files its constitution and an annual report and financial statement, the State is in effect re-

quiring the union to obtain a license as a condition of carrying on its normal and legitimate activities. *International Text Book Company* v. *Pigg*, 217 U. S. 91, 108.

The case cited involved a Kansas statute requiring a foreign corporation doing business within that State to file a statement similar to the one here in question, although much less detailed in nature. This Honorable Court held that such requirement amounted to a licensing of the business. The Alabama Supreme Court in the case at bar missed entirely the significance of the decision in the *International Text Book* case. That Court brushed the decision aside, saying that it "rested solely upon the right of a state to regulate interstate commerce." While the Kansas statute was declared unconstitutional because it violated the "commerce clause", the holding of this Court that the requirement for the filing of such a statement constitutes a licensing is directly applicable to the case at bar.

Similarly, the provision for the payment of an annual fee with the filing of the statement constitutes a license fee upon the right of labor organizations to function within the State of Alabama. *Murdock* v. *Pennsylvania*, 319 U. S. 105.

Civil rights protected by the First Amendment from infringement by Congress and by the Fourteenth Amendment from infringement by the States may not be made subject to a prior license or grant of permission from anyone. *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147; *Murdock* v. *Pennsylvania*, 319 U. S. 105, *supra*. It is entirely immaterial from the point of view of constitutionality that the fee is only nominal or that the license may be had for the asking. *Grosjean* v. *American Press Company*, 297 U. S. 233; *Thornhill* v. *Alabama*, 310 U. S. 88; *Lovell* v. *Griffin*, *supra*.

Under the foregoing established principles of constitutional law Section 7 of the Bradford Act cannot be sus-

tained. For the activities of a labor union which constitute the "functioning" of such an organization are all within the area of rights protected by the Fourteenth Amendment against infringement by any State.[1]

The very essence of a labor organization is the assemblage of working men and women into one association for their mutual protection. The right of employees thus to form themselves into labor unions has been recognized by this Court as "a fundamental right." *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33. See also *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209; *Texas & N. O. Railway Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548.

The constant holding of meetings is an essential part of the "functioning" of a labor union. During an organizational drive, when a union is seeking to unionize non-union employees it calls meetings of such employees in order to explain to them the advantages of union membership. After these employees have joined the union, they meet to discuss their common problems, to exchange information and views concerning such problems, to agree upon common action to solve their problems, and to achieve improvements in their wages, hours and other conditions of employment. There is a constitutional right to hold such meetings which may not be abridged or denied. *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496; *Herndon* v. *Lowry*, 301 U. S. 242; *DeJonge* v. *Oregon*, 299 U. S. 353; *Murdock* v. *Pennsylvania*, 319 U. S. 105; concurring opinion of Mr. Justice Brandeis in *Whitney* v. *California*, 274 U. S. 357, 372; *State* v. *Butterworth*, 104 N.J.L. 579, 142 Atl. 57, 58 A.L.R. 744.

1. "It should be recognized at the outset that a union may use the various forms of concerted action, such as strike, picketing, or boycott, to enforce an objective that is reasonably related to any legitimate interest of organized labor." (Cases cited.) *Joseph James* v. *Marinship Corp. et al.*, decided Dec. 30, 1944, California Supreme Court, No. 17,015.

The process of collective bargaining and the making of collective agreements with employers are also important functions of labor unions and are also fundamental rights. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33; *Texas & N. O. Railway Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548; *Virginian Railway Co.* v. *System Federation, No. 40*, 300 U. S. 515.

When the collective bargaining process breaks down or an impasse is reached, the union may have to resort to a strike and to picketing. These have likewise been recognized as constitutional rights by this Honorable Court. *Thornhill* v. *Alabama*, 310 U. S. 88; *American Federation of Labor* v. *Swing*, 312 U. S. 321; *Senn* v. *Tile Layers Union*, 301 U. S. 468, 478.

A functioning labor organization also constantly employs the printed word to spread its views. It publishes periodicals and leaflets for distribution to its own members, to non-union employees whom it is seeking to organize, and to the public generally. The State may not abridge the freedom of the press. *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147.

By imposing a previous general restraint upon the "functioning" of labor organizations, the Bradford Act is, therefore, denying to the members of these organizations their civil rights, in violation of the Fourteenth Amendment. The statute cannot be sustained on the theory that no constitutional right is absolute but is always subject to regulation to prevent abuse. There is no showing anywhere in the record that the Alabama Legislature conducted any investigation which disclosed any abuses or anticipated abuses. The statute itself contains no findings justifying its provisions. And the record shows affirmatively that no abuses existed among labor organizations in

Alabama and that unions operating in the State have regularly rendered financial accounting to their members. Moreover, even if there were abuses, Section 7 would do nothing to correct them. For once a union complies with the licensing and fee provisions of the statute it may operate in the State whether or not it is guilty of any abuses.

Directly in point are two very recent decisions, one by this Honorable Court and the other by the Supreme Court of Colorado. *Thomas* v. *Collins*, decided by this Court on January 8, 1945, Docket No. 14; *American Federation of Labor* v. *Reilly*, —— P. 2d —— (Colo. Sup. Ct. Dec. 1944).

The *Thomas* case, *supra*, concerned a provision of a Texas statute requiring all labor union organizers operating in that State to register with the Secretary of State and obtain an organizer's card "before soliciting any members for his organization." The Texas statute was much less severe in its requirements and effect than the Alabama statute here involved. In the first place, failure to register under the Texas statute merely debarred a labor organizer from soliciting members. Here failure to file the stated documents and annual reports debars a labor union from carrying on any and all of its functions. Secondly, no fee was charged for registering under the Texas statute, whereas the Alabama statute requires the payment of a two dollars filing fee. Nor was it necessary under the Texas law to file any such comprehensive statements as are required here. Nevertheless, this Honorable Court held the Texas statute to be in contravention of the Fourteenth Amendment, because it imposed a previous restraint upon the rights of free speech and free assembly. In so doing, this Court said:

> "The right thus to discuss, and inform people concerning, the advantages and disadvantages of

unions and joining them is protected, not only as part of free speech, but as part of free assembly."

Discussing the subject further, this Court said in the same opinion:

"As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others."

And the Court added:

"If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful move-

ment is quite incompatible with the requirements of the First Amendment."

The Colorado statute involved in *American Federation of Labor* v. *Reilly, supra,* required all labor unions operating in that State to incorporate, and declared violations to be misdemeanors punishable by fine. The Colorado Supreme Court quoted with approval from the opinion of the trial court in that case, which held those provisions to be

> "* * * unconstitutional and inoperative and unenforceable for the reason that the same do require the prerequisite of incorporation for labor unions which, under its wording and provisions, does operate as a complete general previous restraint upon the exercise of the rights of free speech, free press and assembly, thus violating, in the opinion of the Court, the Due Process Clause of the Fourteenth Amendment of the Federal Constitution considered in conjunction with the First Amendment * * *."

In a well reasoned opinion citing numerous decisions by this Honorable Court and by various State Courts, the Colorado Supreme Court held that "the conclusions of the trial court were sound and that its judgment as to the points in consideration must be affirmed."

In practical operation and effect the restraint imposed by the filing requirements of the Alabama statute under consideration in the case at bar is of the same general character as the restraint imposed by the requirement for incorporation under Colorado statute.

It is clear from all the authorities cited and discussed above that Section 7 of the Bradford Act contravenes the Fourteenth Amendment, as it incorporates the First Amendment.

II

Section 16 violates the right of employees to assemble by making it unlawful for certain employees to be union members.

Under Section 16 of the Bradford Act it is "unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional, or supervisory capacity."

We are not concerned here with the wisdom of supervisory employees in joining a labor organization, but only with their rights. This provision directly abridges the right of executive, administrative, professional, or supervisory employees to self-organization. The "fundamental right" of employees to join into labor unions, recognized by this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, is just as applicable to administrative or supervisory employees as to any other employees. It is for the employees, and not for the State Legislature, to determine what labor organization will best serve their interests. A State may no more exclude employees from joining a labor union of their own choice because of their supervisory status than it may exclude persons from participating in a primary election because of their color. *Nixon* v. *Herndon*, 273 U. S. 536; *Nixon* v. *Condon*, 286

U. S. 73. Both constitute, in the words of Mr. Justice Holmes in *Nixon* v. *Herndon, supra,* a "direct and obvious infringement of the Fourteenth (Amendment)."

It should be noted, moreover, that the prohibition in Section 16 is a very broad one. Not only is it unlawful for a professional or supervisory employee to be a member of a union which includes non-supervisory employees; he may not even join with other professional and supervisory employees in a union of their own if it affiliates with a labor organization which includes non-supervisory employees. In other words, supervisory employees are forbidden to form their own organization, even though it admits no non-supervisory employees to membership, if it affiliates with the American Federation of Labor or the Congress of Industrial Organization.

Section 16 also violates the rights of union members who may wish to admit professional or supervisory employees to membership in their organization. It is well settled that a voluntary association has complete and sole control over who shall be admitted and who shall be excluded from membership.[1] *Mayer* v. *Journeymen Stonecutters Ass'n,* 47 N. J. Eq. 519; *McKane* v. *Adams,* 123 N. Y. 609; *Richardson* v. *Union Congregational Society,* 58 N.H. 187; *Simons* v. *Berry,* 210 App. Div. (N. Y.) 90, 205 N. Y. S. 442. See also *Steele* v. *Louisville & Nashville Railroad Company, et al.,* decided by this Court on December 18, 1944, Docket No. 45; and the dissenting opinion of Mr. Justice Jackson in *Wallace Corporation* v. *National Labor Relations Board,* December 18, 1944, Docket Nos. 66 and 67.

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1. We are in accord with this view so long as the union is not operating under a closed shop agreement. We approve, therefore, the holding in *Joseph James* v. *Marinship Corp., et al.,* decided Dec. 30, 1944, California Supreme Court, No. 17,015, that a "union may not maintain *both* a closed shop and an arbitrarily closed or partially closed union."

The decisions of the National Labor Relations Board excluding supervisory employees from bargaining units with non-supervisory employees, referred to in the opinion of the State Supreme Court below, have no application here. All that those cases hold is that the purposes of the National Labor Relations Act would not be effectuated by "the representation of supervisory employees by the *same* organizations which might represent the subordinates." (*Matter of Maryland Drydock Co.*, 49 NLRB, No. 105; emphasis supplied.) The Board, in the exercise of its discretion under the Act, has merely decided what constitutes an appropriate collective bargaining unit. It has not attempted to prohibit supervisory employees from joining labor organizations. And there certainly is a vast distinction, from the point of view of constitutionality, between holding that supervisory employees do not constitute an appropriate bargaining unit and making membership by supervisory employees in a union a criminal offense, punishable by fine or imprisonment or both under Section 18 of the Bradford Act.

III

Section 16 violates the "due process" clause of the Fourteenth Amendment because of its vagueness.

Nowhere in the Bradford Act are the terms "executive", "administrative", "professional", or "supervisory", as used in Section 16, defined. It is impossible, therefore, for employees or unions to know just which employees come within these categories. For example, most industrial concerns employ "working foremen", who perform certain supervisory functions but who also do work of the same character as their subordinate em-

ployees. Such foremen are generally included in bargaining units by the National Labor Relations Board. See *Floyd D. Penrod & Sons Tool & Engineering Co.*, 59 NLRB, No. 29; *Jones & Laughlin Ore Co.*, 59 NLRB, No. 38; *Land O'Lakes Creameries, Inc.*, 53 NLRB, No. 170; *H. L. Ruggles & Co.*, 38 NLRB, No. 62. In other cases, however, the same Board has held that such employees are supervisors who are to be excluded for bargaining units. See *Fairfield Lumber & Supply Co.*, 57 NLRB, No. 255; *Zierick Mfg. Co.*, 57 NLRB, No. 261. The same difficulities in determining supervisory status have arisen under Section 13 (a)(1) of the Fair Labor Standards Act, exempting "executive, administrative (and) professional" employees. See Report and Recommendations of Presiding Officer in matter of Proposed Amendments to Wage and Hour Division Regulation 541 (CCH Labor Law Service, Par. 31, 302).

With so much existing confusion as to who are and who are not supervisory employees, and with no definitions or standards set up in the statute here in question, an employee would join a union at his peril and the officers of the union would accept an employee into membership at their peril. For they might be subjected to criminal liability if a Court should subsequently decide that the employee was an executive, administrative, professional or supervisory employee.

A criminal statute which is so vague and uncertain as to its application does not fulfill the requirements of due process under the Fifth and Fourteenth Amendments. *Lanzetta v. New Jersey*, 306 U. S. 451; *United States v. Reese*, 92 U. S. 214; *United States v. Cohen Grocery Co.*, 255 U. S. 81, 89.

CONCLUSION

It is respectfully submitted that Sections 7 and 16 of the Bradford Act are unconstitutional for the reasons set forth above.

Respectfully submitted,

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INDEX

	Page
Opinions below	2
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	3
Summary of argument	8
Argument:	
Introduction	10
I. Section 16 of the Alabama Act is incompatible with the National Labor Relations Act	12
II. Section 4 of the Florida Act is incompatible with the the National Labor Relations Act	23
III. The method of enforcement provided to implement Section 7 of the Alabama Act and Section 6 of the Florida Act is incompatible with the National Labor Relations Act	32
Appendix A, The Alabama Act	45
Appendix B, The Florida Act	50
Appendix C, The National Labor Relations Act	54

CITATIONS

Cases:	
A. S. Abell Company, Matter of, 54 N. L. R. B. 62	21
Alabama and V. Ry. v. *Jackson and E. Ry.*, 271 U. S. 244	22
Allen-Bradley Local v. *Wisconsin Employment Relations Board*, 315 U. S. 740	10, 30, 37, 41
Amalgamated Utility Workers v. *Cons. Edison Co.*, 309 U. S. 261	37
Armour and Co., Matter of, 49 N. L. R. B. 688	14
Baltic Mining Co. v. *Massachusetts*, 231 U. S. 68	43
Barron v. *Burnside*, 121 U. S. 186	43
Charleston & W. C. Ry. Co. v. *Varnville Co.*, 237 U. S. 597	23
Chicago v. *Fieldcrest Dairies*, 316 U. S. 168	40
Chrysler Corp., Matter of, 36 N. L. R. B. 157, 44 N. L. R. B. 881	14
Cincinnati Daily Newspaper Publishers Ass'n, Matter of, 55 N. L. R. B. 571	21
Cloverleaf Butter Co. v. *Patterson*, 315 U. S. 148	23, 26
Conn. General Life Ins. Co. v. *Johnson*, 303 U. S. 77	43
Cooney v. *Mountain States Tel. & Tel. Co.*, 294 U. S. 384	43
Country Life Press Corporation, Matter of, 51 N. L. R. B. 1362	21

Cases—Continued.

	Page
Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282	43
Eagle-Picher Mining & Smelting Co. v. *National Labor Relations Board*, 119 F. (2d) 903	13
Eichholz v. *Public Service Commission*, 306 U. S. 268	23
Eppinger & Russell Co., Matter of, 56 N. L. R. B. 1259	26, 39
Fox Film Corp. v. *Doyal*, 286 U. S. 123	43
General Motors Corp., Matter of, 34 N. L. R. B. 1052	20
Godchaux Sugars, Inc., Matter of, 44 N. L. R. B. 874	20
Graves v. *O'Keefe*, 306 U. S. 466	43
W. F. Hall Printing Co., Matter of, 51 N. L. R. B. 640	21
Hazel-Atlas Glass Co v. *National Labor Relations Board*, 127 F. (2d) 109	13
H. J. Heinz Co. v. *National Labor Relations Board*, 311 U. S. 514	39
Hines v. *Davidowitz*, 312 U. S. 52	26
Hooper v. *California*, 155 U. S. 648	34
Jerome v. *United States*, 318 U. S. 101	37
Johnson v. *Maryland*, 254 U. S. 51	43
Jones & Laughlin Corp. v. *National Labor Relations Board*, decided January 18, 1945, (C. C. A. 5)	13, 22
Knight v. *Watson*, 221 Ala. 69	34
Leo Lichtenstein, et al., Matter of, 55 N. L. R. B. 1429	22
Marshall Field & Co., Matter of, 34 N. L. R. B. 1	20
Marx v. *Lining*, 231 Ala. 445	34
Maryland Drydock Co., Matter of, 49 N. L. R. B. 733	15, 16, 19, 20
Medo Photo Supply Corp. v. *National Labor Relations Board*, 321 U. S. 678	17
Midland Steamship Line, Inc., 53 N. L. R. B. 727	21
Mintz v. *Baldwin*, 289 U. S. 346	23
Missouri Pacific R. Co. v. *Porter*, 273 U. S. 341	22
Muskegon Dock & Fuel Co., Matter of, 58 N. L. R. B. 718	19
Napier v. *Atlantic Coast Line Railroad Co.*, 272 U. S. 605	22, 26
National Labor Relations Board v. *American Potash & Chemical Co.*, 98 F. (2d) 488, certiorari denied, 306 U. S. 643	13
National Labor Relations Board v. *Bradford Dyeing Ass'n*, 310 U. S. 318	17
National Labor Relations Board v. *Fruehauf Trailer Co.*, 301 U. S. 49	13
National Labor Relations Board v. *Hearst Publications*, 322 U. S. 111	37
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1	37
National Labor Relations Board v. *Luzuray, Inc.*, 123 F. (2d) 106	13
National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862, certiorari denied, 304 U. S. 576, 585	17

Cases—Continued. Page

National Labor Relations Board v. *Richter's Bakery*, 140 F. (2d) 870 certiorari denied, 322 U. S. 754 13
National Labor Relations Board v. *Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667 13
Northern Pacific Ry. Co. v. *Washington*, 222 U. S. 370 22
Northwestern Bell Telephone Co. v. *Nebraska State Ry. Commission*, 297 U. S. 471 23
Oregon-Washington R. & Nav. Co. v. *Washington*, 270 U. S. 87 22
Packard Motor Car Co., Matter of, 53 N. L. R. B. 875 14
Packard Motor Car Co., Matter of, Case No. 7-R-1848, decided March 26, 1945 ..... 15, 16, 21
Parker v. *Brown*, 317 U. S. 341 29
Pearl Assurance Co. v. *Harrington*, 313 U. S. 549 29
Pollock v. *Williams*, 322 U. S. 4 42
Proximity Mfg. Co., Matter of, 54 N. L. R. B. 1179 21
Railroad Comm'n. v. *Pullman Co.*, 312 U. S. 496 40
Rapinwax Paper Company, Matter of, 56 N. L. R. B. 1774 22
Service Printers, Inc., Matter of, 54 N. L. R. B. 1082 21
Sherwin-Williams Co., Matter of, 37 N. L. R. B. 260 20
Sioux Remedy Co. v. *Cope*, 235 U. S. 197 43
Soss Mfg. Co., Matter of, 56 N. L. R. B. 348 ..... 15, 20
St. Johns River Shipbuilding Co., 52 N. L. R. B. 12, 958, 55 N. L. R. B. 1451, 59 N. L. R. B. No. 83, 60 N. L. R. B. No. 55 11
State v. *Bynum*, 243 Ala. 138 34
State v. *Ellis*, 201 Ala. 295 34
Steele v. *Louisville & N. R. Co.*, No. 45, this Term, decided Dec. 18, 1944 ..... 16, 17
Sunflower Lumber Co. v. *Turner Supply Co.*, 158 Ala. 191 34
Tennessee Copper Co., Matter of, 9 N. L. R. B. 117 20
Terral v. *Burke Construction Co.*, 257 U. S. 529 43
Thomas v. *Collins*, No. 14, this Term, decided Jan. 8, 1945 ..... 10, 25, 30, 34
Thompson v. *Magnolia Co.*, 309 U. S. 478 40
Times-Mirror Co., Matter of, 54 N. L. R. B. 787 21
Todd Shipyards Corp., Matter of, 51 N. L. R. B. 1211 14
Truax v. *Raich*, 239 U. S. 33 29
Try-Me Bottling Co. v. *State*, 235 Ala. 207 34
Union Bag and Paper Corp., Matter of, 52 N. L. R. B. 591 21
Union Collieries Coal Co., Matter of, 41 N. L. R. B. 961 20
United States v. *American Bond & Mortgage Co.*, 31 F. (2d) 448, affirmed, 52 F. (2d) 318 34
United Wall Paper Factories, Inc., Matter of, 49 N. L. R. B. 1423 14
Wallace Corp. v. *N. L. R. B.*, No. 66, this Term, decided Dec. 18, 1944 ..... 16, 17

Cases—Continued. Page

Watkins, Matter of, 53 N. L. R. B. 235 19
Welch Co. v. New Hampshire, 306 U. S. 79 23
Western Union Tel. Co. v. Foster, 247 U. S. 105 43
Whitehead v. Coker, 16 Ala. App. 165 34
Whiting-Mead Co., Matter of, 45 N. L. R. B. 987 20

United States Statutes:

Fair Labor Standards Act, Sec. 13 (a) (1) 13
Internal Revenue Code, 53 Stat. 28, 26 U. S. C., § 54 (a), (b), and 53 Stat. 62, 26 U. S. C. § 145 40
National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151, *et seq.*):
Section 1 ..... 36, 54
Section 2 ..... 13, 18, 25, 29, 55
Section 7 ..... 12, 16, 25, 57
Section 8 ..... 12, 17, 25, 36, 37, 57
Section 9 ..... 12, 17, 25, 36, 38, 57
Section 10 (a) 36, 58
Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 102 27
Railway Labor Act, 48 Stat. 1185, 45 U. S. C. § 152 27
Railway Labor Act, Title II, 49 Stat. 1189, 45 U. S. C. § 181, *et seq* 27
Revenue Act of 1943, Title 1, § 117a, 58 Stat. 36, 26 U. S. C. A. § 54 (f) 40

State Statutes:

Alabama:
Bradford Act, Senate Bill No. 341, Acts of Alabama, 1943, No. 298, p. 253 (Code 1943, Tit. 26, Sec. 376, *et seq.*) 2
Sec. 1 45
Sec. 2 45
Sec. 7 ..... 3, 10, 31, 32, 33, 46
Sec. 16 ..... 3, 8, 46, 48
Sec. 18 ..... 3, 33, 48

Florida:
House Bill No. 142, Laws of Florida, 1943, Chapter 21968, p. 565 2
Sec. 1 50
Sec. 2 ..... 23, 50
Sec. 4 ..... 5, 9, 23, 27, 51
Sec. 6 ..... 5, 10, 33, 34, 52
Sec. 9 ..... 24, 52
Sec. 10 52
Sec. 14 ..... 5, 24, 27, 33, 53
Sec. 15 ..... 27, 53

Miscellaneous:

	Page
Code of Federal Regulations, Title 29, Part 541, Cum. Supp. 1944, Book 6, pp. 8603–5, 5 Fed. Reg. 4077, 7 Fed. Reg. 332	14
89 Cong. Rec. 1353	18
Daykin, *The Status of Supervisory Employees under the National Labor Relations Act*, 29 Iowa L. Rev. 297	20
58 Harv. L. Rev. 448, note	16
H. R. 1996, 78th Cong., 1st Sess.	18
McIver, Wagner, and McGirr, *Technologists' Stake in the Wagner Act* (1944)	14
Merrill, *Unconstitutional Conditions*, 77 U. of Pa. L. Rev. 879	43
United States Department of Labor, Wage and Hour Division, *"Executive, Administrative, Professional * * * Outside Salesmen" Redefined*, pp. 3–4, 24–26	14

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, ET AL.,
PETITIONERS

v.

ROBERT E. McADORY, ET AL.

No. 855

CONGRESS OF INDUSTRIAL ORGANIZATIONS, ET AL.,
PETITIONERS

v.

ROBERT E. McADORY, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COUR. OF THE STATE OF ALABAMA

No. 811

LEO H. HILL, ET AL., PETITIONERS

v.

STATE OF FLORIDA EX REL. J. TOM WATSON,
ATTORNEY GENERAL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of the State of Alabama in No. 588 (R. 321–359) is reported at 18 So. (2d) 810; its opinion in No. 855 (R. 220) is reported at 20 So. (2d) 40. The opinion of the Supreme Court of the State of Florida in No. 811 (R. 26–35) is reported at 19 So. (2d) 857.

JURISDICTION

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code.

QUESTION PRESENTED

This brief is filed in response to the invitation of the Court to the Solicitor General. It is limited to discussion of the question whether Sections 7 and 16 of the Alabama Act and Sections 4 and 6 of the Florida Act can constitutionally coexist with the National Labor Relations Act.

STATUTES INVOLVED

The statutes involved are Senate Bill No. 341, Acts of Alabama, 1943, No. 298, page 253 (Code 1943, Tit. 26, Sec. 376, *et seq.*), known as the Bradford Act; House Bill No. 142, Laws of Florida, 1943, Chapter 21968, page 565; and the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Sec. 151, *et seq.*). The pertinent provisions of each statute are attached as appendices A, B, and C, respectively, to this brief, pp. 45, 50, 54, *infra*.

STATEMENT

No. 588.—In 1943 the Alabama Legislature enacted Senate Bill No. 341, known as the Bradford Act. Section 7 of that Act provides that any labor organization functioning in the State of Alabama must file a copy of its constitution and by-laws and those of its parent organizations with the State Department of Labor. Section 7 further provides that every labor organization functioning in Alabama must file annual reports with the Director of the Department of Labor containing the name and address of the organization; the names of its principal officers, the date of their election and the total compensation paid them; the number of paid-up members; the amount of all fees, dues and other receipts of the organization, together with a list of all disbursements made by the organization and the names of the recipients of such disbursements; and a complete statement of all assets of the organization. Section 16 provides that it shall be unlawful for "executive", "administrative", "professional" or "supervisory" employees to join or retain membership in labor organizations which either themselves or through their affiliates admit other classes of employees into membership. Section 18 provides that labor organizations which violate any provision of the Act shall be penalized by a fine of $1000.00 for each violation, and further declares that the doing of any act forbidden by the statute,

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except where a penalty is otherwise specifically provided, shall constitute a misdemeanor punishable by fine or imprisonment, or both.

On October 13, 1943, petitioners in No. 588 filed a petition in the Circuit Court of Jefferson County, Alabama, pursuant to the Alabama Declaratory Judgment Statute (Code 1940, Tit. 7, Secs. 156–168), for adjudication of the validity of the Bradford Act (R. 1–24). Petitioners contended that the Act was unconstitutional, because, *inter alia,* it was in conflict with the provisions of the National Labor Relations Act (R. 8). On March 4, 1944, after hearing, the Circuit Court issued its decision holding that Section 7 of the Act was constitutional and valid, that certain other sections were unconstitutional, and refusing to pass upon the validity of Sections 15 and 16 (R. 221–224). Upon appeal the Supreme Court of Alabama considered the constitutional questions presented by petitioners (R. 318), and on May 25, 1944, entered its opinion and judgment affirming the decision of the Circuit Court and holding in addition that Sections 15 and 16 of the Bradford Act were constitutional (R. 320–353). Two judges dissented (R. 353–358). On June 22, 1944, the court denied petitioners' motion for rehearing (R. 358–359, 360).

No. 855.—The declaratory judgment action by petitioners in No. 855, challenged Sections 7 and 16 of the Bradford Act on grounds identical with

those relied upon by petitioners in No. 588 (R. 2–26). On December 7, 1944, the Supreme Court of Alabama entered its opinion (R. 220) affirming the judgment of the Circuit Court and rejecting petitioners' contentions on the authority of *Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, 18 So. (2d) 810.

No. 811.—House Bill No. 142, enacted by the Florida Legislature in 1943, prohibits any person who receives financial compensation from a labor organization from acting on its behalf in issuing union membership or application cards, engaging in collective bargaining, or adjusting employee grievances, without having obtained a license from the State. Section 4 of the Act provides that a license so to act as "business agent" shall not be issued to persons who have not been resident citizens of the United States for at least 10 years, or who have been convicted of a felony, or who are not of good moral character. Licenses are not to be granted within thirty days of the filing of the application. Section 6 of the Act provides that any labor organization operating in the State of Florida shall annually file with the Secretary of State a report disclosing the name and address of the organization and the names of its principal officers. Section 14 provides that any person or labor organization found to have violated any provision of the Act shall be punished by fine or imprisonment, or both.

On October 8, 1943, the Attorney General of the State of Florida filed a complaint in the Circuit Court of Duval County, Florida, against petitioners in No. 811, alleging that petitioners had not complied with the provisions of House Bill No. 142 and seeking to enjoin petitioner United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local No. 234 "from operating as a union," and to enjoin petitioner Hill from "acting as business agent" for the Association unless and until petitioners fully complied with the provisions of the Act (R. 1–3). In answer to the complaint (R. 4–15) petitioners alleged that House Bill No. 142 was unconstitutional for the reason, among others, that its provisions were in conflict with the National Labor Relations Act (R. 10). The cause was submitted on the pleadings (R. 16–17), and on June 22, 1944, the Circuit Court filed its final decree holding that questions were properly presented only with regard to Sections 4 and 6 of the Florida Act, and that these sections, with the exception of a phrase appearing in Section 4 which the court held invalid,[1] were constitutional. The court enjoined the defendant Association "from functioning and operating as a labor organization or labor union" until it complied with the requirements of Section 6, and enjoined the defendant

[1] This phrase is italicized in the copy of the Act which appears in the Appendix to this brief (*infra*, p. 52).

Hill "from acting as business agent for" the Association until he procured a license as required by Section 4 (R. 18–19). On June 27, 1944, petitioners appealed to the Supreme Court of Florida (R. 19–23). On November 28, 1944, the Supreme Court of Florida entered its opinion (R. 26–35) and judgment (R. 35) affirming the ruling of the lower court. In reply to petitioners' contention that Sections 4 and 6 of the Florida Act were inconsistent with the provisions of the National Labor Relations Act, the court said (R. 34):

> This contention proceeds on the presumption that the National Labor Relations Act preempts the field of labor regulation and removes any power on the part of the states to do so. If appellants' contentions were true, the National Labor Relations Act rather than the Act in question would go down under the Constitution. *National Labor Relations Board* vs. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 Sup. Ct. 615 81 L. Ed. 893; *Wisconsin Labor Relations Board* vs. *Fred Ruepling* [sic] *Leather Co.*, 228 Wis. 473, 279 N. W. 673. In both these cases it was held that the power of Congress to regulate labor relations rested on the commerce clause while the power of the State rested on the police power and that the State power was supreme when (fol. 52) no undue burden was laid on interstate commerce. Unless interstate commerce is obstructed, the Federal Act may not be called into operation.

SUMMARY OF ARGUMENT

I

Section 16 of the Alabama act makes it unlawful for supervisory, administrative and professional employees to join unions affiliated with organizations admitting to membership rank and file employees. The National Labor Relations Act grants administrative and professional employees who exercise no supervisory powers, the right to form, join and be represented by unions of their own choosing even though they admit to membership nonadministrative and nonprofessional employees. Therefore, as to administrative and professional employees in a nonsupervisory capacity who are subject to the national statute, the Alabama act is clearly incompatible with the national Act.

The national Board has consistently protected the right of supervisors, like all other employees, to join any union without discrimination by their employer to discourage such membership. In some industries the Board does not segregate supervisory from rank and file employees for bargaining purposes. In other industries, while the Board for a time refused to certify as the representatives of supervisory employees, unions affiliated with organizations admitting nonsupervisory employees to membership, it has recently stated that its policy respecting this matter is open for reconsideration. The Alabama statute is in definite conflict with national law in respect to supervisory employees

in those industries in which the Board has found no need to treat supervisory employees differently from nonsupervisory employees. In respect to other industries, Congress did not intend that any agency but the Board should place limitations on the composition of unions representing supervisory employees. The federal law, therefore, has completely occupied the field.

II

Section 4 of the Florida law prohibits any person from bargaining on behalf of employees until he has received a state license. This constitutes a regulation of collective bargaining, limiting the class of those who may bargain, in contravention of the national statute which contains no such qualification. The national Board has held that failure of a union business agent to comply with this restriction does not afford an employer a basis for refusing to bargain with the business agent. The Florida act also requires a delay of at least thirty days before a license may be allowed, thereby interfering with the prompt settlement of disputes through collective bargaining as contemplated by the national statute. In addition it bars from collective bargaining citizens of the United States of less than ten years' standing, and citizens who have not resided in the United States for the preceding ten years, limitations not recognized in the national law. In all of these respects the Florida act impedes collective bargaining. It does not resemble

the Texas statute involved in *Thomas* v. *Collins*. On the contrary it impairs rights guaranteed by Congress, and is therefore invalid. Cf. *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 750–751.

III

Section 7 of the Alabama act and Section 6 of the Florida act require that labor organizations file certain reports with the state authorities. We do not contest the validity of such substantive requirements. But Florida has claimed, and Alabama is likely to claim, the power to enforce these provisions by depriving an organization of its right to bargain until the reports are filed. The national Act unconditionally requires an employer to bargain with the representative of his employees. Enforcement of the state laws by means of a prohibition against bargaining thus directly interferes with compliance with the federal statute, although other sanctions would not have the same effect. In our opinion, the sections dealing with reports are incompatible with the national Act to the extent that their enforcement is secured by means of enjoining or rendering criminal collective bargaining, or voiding contracts resulting from collective bargaining.

ARGUMENT

INTRODUCTION

The National Labor Relations Act applies only to employment relations affecting interstate or for-

eign commerce. The state laws involved in these cases are applied to employees and labor organizations whose activities are and are not reached by the federal statute. Inasmuch as we are concerned only with the effect of the laws upon the enforcement of the national Act, the arguments presented herein are to be considered as addressed solely to employment relations covered by that statute. The records in the Alabama cases show that the petitioning unions, or some of them, fall within that category. (No. 588, R. 236, 253–254, 304; No. 855, R. 82–83.) This does not affirmatively appear in the Florida case, although the complaint filed by the State prayed that the petitioners be enjoined from "operating as a union" with respect to any person or persons employed by the St. Johns River Shipbuilding Company of Jacksonville, Florida (R. 3). The National Labor Relations Board has held that this company is engaged in interstate commerce and is subject to the National Labor Relations Act. *Matter of St. Johns River Shipbuilding Co.*, 52 N. L. R. B. 12; *ibid.*, 52 N. L. R. B. 958; *ibid.*, 55 N. L. R. B. 1451; *ibid.*, 59 N. L. R. B. No. 83; *ibid.*, 60 N. L. R. B. No. 55. Furthermore, the Florida Supreme Court has treated the case as if the national Act were applicable (R. 34). Accordingly, we shall deal with the case on the same basis, and assume that it involves employees subject to the federal law.

I

SECTION 16 OF THE ALABAMA ACT IS INCOMPATIBLE WITH THE NATIONAL LABOR RELATIONS ACT

Section 16 of the Alabama Act provides that:

> It shall be unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional, or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional, or supervisory capacity.

Unions and individuals violating this section are subject to the penalties prescribed in Section 18.

The National Labor Relations Act provides (§ 7) that "employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing." Section 8 (5) makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees". Section 9 (b) authorizes the Board to define units appropriate for collective bargaining, and Section 9 (c) empowers the Board to certify collective bargaining representatives selected by employees in such units.

None of these provisions of the National Act contains any exemption for executive, administrative, professional or supervisory employees. On the contrary, Section 2 (3) defines "employee" to "include any employee". The Board and the courts have often held that the term "employee" includes persons in executive, administrative, professional and supervisory capacities.[2] In so far as professional and administrative[3] employees who are not executives or supervisors are con-

[2] See e. g., *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667, 670–671 (C. C. A. 8), enforcing 13 N. L. R. B. 1186; *National Labor Relations Board* v. *American Potash & Chemical Co.*, 98 F. (2d) 488, 493–494 (C. C. A. 9), enforcing 3 N. L. R. B. 140, certiorari denied, 306 U. S. 643; *National Labor Relations Board* v. *Luzuray, Inc.*, 123 F. (2d) 106, 108–109 (C. C. A. 2), enforcing 16 N. L. R. B. 37, as amended by 18 N. L. R. B. 945; *National Labor Relations Board* v. *Richter's Bakery*, 140 F. (2d) 870 (C. C. A. 5), enforcing 46 N. L. R. B. 447, certiorari denied, 322 U. S. 754; *Eagle-Picher Mining & Smelting Co.* v. *National Labor Relations Board*, 119 F. (2d) 903, 911 (C. C. A. 8), enforcing 16 N. L. R. B. 727; *Hazel-Atlas Glass Co.* v. *National Labor Relations Board*, 127 F. (2d) 109 (C. C. A. 4), enforcing 34 N. L. R. B. 346; *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*, decided January 18, 1943 (C. C. A. 5), enforcing 54 N. L. R. B. 679; cf. *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 55, enforcing 1 N. L. R. B. 68, 76, 79, 80.

[3] It is not clear whether "administrative" covers employees who are not "executive" or "supervisory". The Alabama Attorney General in his brief below in No. 588 (p. 57) has suggested that these terms were adopted from Section 13 (a) (1) of the Fair Labor Standards Act, which exempts any employee employed in a bona fide "executive, administrative, professional * * * capacity * * * (as such terms

cerned, the Board has held without qualification that their status did not require them to be treated differently from any other employee, and the same is true even of supervisory employees in some industries. In particular the Board has often protected the right of unions composed chiefly of rank and file to admit such persons to membership and to bargain collectively for them, and, conversely, the latter's right to join and be represented by such organizations.[4] The Board has held, however, that

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are defined and delimited by regulations of the Administrator)". Upon the basis of a report in which it was recognized that "executive" and "administrative" were overlapping terms but in which it was concluded that "administrative" was intended to include work involving the general exercise of independent discretion but not the authority to supervise others, the Administrator has defined the terms separately and in a way which indicates that some administrative employees would not be executives. Code of Federal Regulations, Title 29, Part 541 (Cum. Supp. 1944, Book 6, pp. 8603-5), 5 Fed. Reg. 4077, 7 Fed. Reg. 332; United States Department of Labor, Wage and Hour Division, "*Executive, Administrative, Professional * * * Outside Salesmen" Redefined* (Report and Recommendations of the Presiding Officer October 24, 1940), pp. 3-4, 24-26.

[4] As to administrative and professional employees, see e. g., *Matter of Packard Motor Car Co.*, 53 N. L. R. B. 875, 877; *Matter of Chrysler Corp.*, 36 N. L. R. B. 157, 159-160; *Matter of Chrysler Corp.*, 44 N. L. R. B. 881, 883-887; *Matter of United Wall Paper Factories, Inc.*, 49 N. L. R. B. 1423, 1425-1426; *Matter of Todd Shipyards Corp.*, 51 N. L. R. B. 1211, 1213-1214; *Matter of Armour and Co.*, 49 N. L. R. B. 688, 690-691. The names of organizations admitting administrative and professional employees into membership, and cases in which the Board has certified various labor organizations as exclusive bargaining representatives for these classes of employees are collected in McIver, Wagner, and

although supervisory employees in all industries are employees within the meaning of the Act and protected against discrimination under Section 8 (1) and (3), there may be some qualifications in many industries respecting the affiliation of unions which the employer must recognize as statutory agents for supervisory employees. *Matter of Packard Motor Car Co.*, Case No. 7–R–1884, decided March 26, 1945; *Matter of Soss Mfg. Co.*, 56 N. L. R. B. 348; *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733.

There can be no doubt, we think, that the Alabama Act is in conflict with the federal statute

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McGirr, *Technologists' Stake in the Wagner Act* (1944). See particularly, pp. 120–154, 167–170, 243–245. While, as the authors point out, *ibid.* pp. 120–154, the Board has often found that separate units of various types of professional or administrative employees, such as engineers, chemists, plant guards, office and clerical employees are appropriate for collective bargaining, it has always recognized and protected the right of employees in such units to join and to be represented by unions which represent rank and file employees. In discussing Section 16 of the Alabama Act the authors comment as follows (*ibid.* p. 29): "Alabama in 1943, disregarding the scope of the National Labor Relations Act, especially as regards its complete coverage of cases 'affecting commerce,' and also the Board's wide and final discretion in determining appropriate units, which includes the right to define 'professional workers' and its right to certify representatives, passed a law which includes this significant provision: [quoting Section 16].

"This procedure amounts to 'nullification' of a Federal statute—an issue which was closed back in the days of John C. Calhoun. It attempts to amend the Wagner Act for the State of Alabama, excluding from the jurisdiction of the National Labor Relations Board workers most clearly brought within its scope of authority by the Act."

in so far as it relates to the professional and administrative employees who have no supervisory functions and also to supervisory[5] employees in industries where the Board does not differentiate them from other employees. These employees under the express language of the Act have the right to join unions of their own choosing.[6] The Board and the courts have uniformly held that the Act gives these employees the right to join unions admitting other types of employees. Moreover, if the Board defines a bargaining unit as including both professional and other employees, and certifies a particular union as its representative, that union would be

[5] As to supervisory employees in certain industries, see *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733, 741, and cases cited n. 12, *infra*, p. 21. We shall hereinafter use the word "supervisory" to include both executive and supervisory employees as well as those administrative employees who act in a supervisory capacity. In practice, problems in labor relations have so far arisen only for such inferior supervisory employees as foremen, and not for persons ordinarily regarded as executives. Cf. *Matter of Packard Motor Car Co.*, Case No. 7-R-1884, decided March 26, 1945.

[6] Section 7 provides that employees shall have the "right to * * * join * * * labor organizations, [and] to bargain collectively through representatives *of their own choosing*". Whether the italicized phrase is applicable to the right to join, as distinct from the right to bargain, as a matter of grammar, clearly it was intended that both rights be equally sweeping.

There is presented here, of course, no question concerning the right of a labor organization, whatever its scope may be, to exclude from membership persons hostile to their interests. Cf. the *Wallace* and *Steele* cases, *infra*. See Note (1945) 58 Harv. L. Rev. 448, 453–454.

entitled under the federal statute to bargain on behalf of all the employees in the unit. Indeed, the obligation imposed by Section 8 (5) exists irrespective of a certification by the Board.[1] Although the national Act does not require that all employees in a bargaining unit be members of the organization representing them, it certainly contemplates that they shall have the right to participate in the affairs and administration of the bargaining representative—a right normally exercised and safeguarded by union membership. See *Wallace Corp.* v. *National Labor Relations Board*, No. 66, this Term, decided December 18, 1944. Cf. *Steele* v. *Louisville & N. R. Co.*, No. 45, this Term, decided December 18, 1944. Furthermore, the State law in effect fixes the units in which these employees may bargain on the basis of the type of work they perform. The national Board is authorized by Section 9 (b) to determine the appropriate bargaining unit, and one of the factors which it invariably considers is the type of work performed by the employees in question. The state restriction thus operates in a field plainly covered under the national Act.

The Alabama statute, which imposes severe penalties on both the employee covered by Section

[1] *Medo Photo Supply Corp.* v. *National Labor Relations Board*, 321 U. S. 678; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 338–340; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 868 (C. C. A. 2), certiorari denied, 304 U. S. 576, 585.

16 and the rank and file organization which admits him to membership, precludes such persons from joining the union which represents them, a result clearly inconsistent with the normal working of the federal Act as contemplated by Congress. And the state law equally clearly has deprived such employees of the right to join labor organizations of their own choosing guaranteed by Section 7 of the national statute.

The only explanation offered by the State of Alabama is found in the brief of the Attorney General of Alabama in the court below in the A. F. of L. case. It is there stated (p. 57) that "The terms 'executive,' 'administrative' and 'professional' employees appearing in Section 16 of the Bradford Act were apparently adopted from Section 13 (a) of the Fair Labor Standards Act, in which such classes are exempted from the provisions of that Act.". The Wagner Act, however, contains no similar exemption. Indeed, Congressman Smith of Virginia, on February 25, 1943, introduced a bill to amend the National Labor Relations Act by excluding from the definition of "employee" in Section 2 (3) of the Act "any individual employed in a bona fide executive, administrative, professional or supervisory capacity." H. R. 1996, 78th Cong., 1st Sess. The bill was referred to the Committee on Labor (89 Cong. Rec. 1353) and was never reported to the House.

As to supervisory employees in those industries where the Board has differentiated them from other employees in respect to the affiliation of the unions which it certifies as their statutory bargaining agents, the Alabama statute is likewise in conflict with federal law. They, no less than other employees, are guaranteed in the national statute the right to join labor organizations of their own choice subject to the reservation that their activities in behalf of such unions shall not interfere with the organizational freedom of subordinate employees. The alleged absence of inconsistency on which the state relies results from the Board's decision in *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733. There the Board held that conditions of self-organization in mass production industries had not sufficiently crystallized to warrant the certification of statutory bargaining agents for units composed of supervisory employees. The *Maryland Drydock* decision was not concerned with and did not in any way affect the right of supervisory employees to join unions of their own choosing, regardless of their affiliation or composition, a right which the Board has uniformly protected both before [8] and after [9] the *Maryland Drydock* decision, by holding that the discharge of a foreman because he be-

[8] See n. 2, p. 13, *supra*.

[9] *Matter of W. W. Watkins*, 53 N. L. R. B. 235, 236–237, 242, 247; *Matter of Muskegon Dock & Fuel Co.*, 58 N. L. R. B. 718.

longed to a rank and file union was an unfair labor practice [10] and by requiring the employer to make reinstatement with back pay.[11]

The Board had also, prior to the *Maryland Drydock* decision, certified representatives for units of supervisors. See, e. g., *Matter of Union Collieries Coal Co.*, 41 N. L. R. B. 961, 965–968; *Matter of Godchaux Sugars, Inc.*, 44 N. L. R. B. 874, 877. Cf. *Matter of Tennessee Copper Co.*, 9 N. L. R. B. 117, 119. In the *Maryland Drydock* decision a majority of the Board overruled these earlier holdings respecting the certification of units of supervisors. The problem was subsequently reexamined by the Board in *Matter of Soss Mfg. Co.*, 56 N. L. R. B. 348 (1944), and the Board held that the *Maryland Drydock* doctrine did not deprive supervisory employees of

[10] See *Matter of Whiting-Mead Co.*, 45 N. L. R. B. 987, 1003, 1015–1018, now pending before the Circuit Court of Appeals for the Ninth Circuit, where the Board ordered reinstatement of a foreman discharged for joining a rank and file union. There it appeared that the employer had discharged the foreman not to preserve the employer's neutrality but because of hostility to the union.

[11] During this period the Board permitted employers to protect themselves against charges of unfair labor practices by demoting supervisors who were unduly active in labor organizations of rank and file employees. See *Matter of Sherwin-Williams Co.*, 37 N. L. R. B. 260, 278–280; *Matter of General Motors Corp.*, 34 N. L. R. B. 1052, 1059–1064; *Matter of Marshall Field & Co.*, 34 N. L. R. B. 1. The development of Board policy in this field is traced in Daykin, *The Status of Supervisory Employees Under the National Labor Relations Act*, 29 Iowa L. Rev. 297.

protection against discrimination for union activity. Upon further reconsideration, in *Matter of Packard Motor Car Co.*, Case No. 7–R–1884, decided March 26, 1945, the Board overruled the *Maryland Drydock* case in so far as it applied to unions of supervisory employees not affiliated with rank and file organizations, and expressly left open the question of representation of supervisory employees by other types of unions.

This line of decisions demonstrates that the Board's doctrine is still in course of evolution, and that the subject is one upon which the Board is continually exercising discretion in determining how the policies of the federal statute may best be achieved. Furthermore, even the *Maryland Drydock* decision explicitly recognized that in various trades where foremen have long been admitted to union membership, a different result is justified (49 N. L. R. B., at 741).[12] The group

[12] Since its decision in the *Maryland Drydock* case the Board has consistently found that supervisory employees in certain trades were appropriately included in the same unit with rank and file employees and that they could, of course, be represented by the same organization as their subordinates. See, *Matter of Midland Steamship Line, Inc.*, 53 N. L. R. B. 727; *Matter of W. F. Hall Printing Co.*, 51 N. L. R. B. 640; *Matter of Country Life Press Corporation*, 51 N. L. R. B. 1362; *Matter of Union Bag and Paper Corporation*, 52 N. L. R. B. 591; *Matter of The A. S. Abell Company*, 54 N. L. R. B. 62; *Matter of The Times-Mirror Company*, 54 N. L. R. B. 787; *Matter of Service Printers, Inc.*, 54 N. L. R. B. 1082; *Matter of Proximity Mfg. Co.*, 54 N. L. R. B. 1179; *Matter of Cincinnati Daily Newspaper Publishers*

of industries so treated may, of course, be modified by the Board as circumstances change. It thus appears that the Board's policy in this field is flexible, properly responding to the facts in the cases coming before it.

This analysis indicates that Congress in the National Labor Relations Act has formulated the general principle that all employees may join any organization they choose. In so far as the right to recognition as a statutory bargaining agent may be subject to limitation,[13] Congress obviously did not intend that that limitation be established by any agency but the national Board. It is therefore correct to say in this case that the federal statute has completely occupied the field, and that no room is left for state regulation whether or not in conflict with the federal law.[14] "When Congress has taken the particular subject-

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Ass'n, 55 N. L. R. B. 571; *Matter of Leo Lichtenstein, et al.*, 55 N. L. R. B. 1429; *Matter of Rapinwax Paper Company*, 56 N. L. R. B. 1774. Compare *Jones & Laughlin Corp.* v. *National Labor Relations Board*, decided January 18, 1945 (C. C. A. 5). See also, National Labor Relations Board, *Eighth Annual Report* (Gov't Print. Off. 1944), pp. 55–57.

[13] No one is here challenging the power of the Board to establish this limitation. The State's argument that there is no conflict with the federal Act must be predicated on the assumption that the Board has the authority which it has exercised.

[14] *Napier* v. *Atlantic Coast Line Railroad Co.*, 272 U. S. 605; *Oregon-Washington R. & Nav. Co.* v. *Washington*, 270 U. S. 87; *Alabama and V. Ry.* v. *Jackson and E. Ry.*, 271 U. S. 244; *Missouri Pacific R. Co.* v. *Porter*, 273 U. S. 341; *Northern Pacific Ry. Co.* v. *Washington*, 222 U. S. 370.

matter in hand coincidence is as ineffective as opposition * * *". *Charleston & W. C. Ry. Co.* v. *Varnville Co.*, 237 U. S. 597, 604; *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 169. The cases holding that a federal statute will not supersede a state law before the federal administrative agency has acted [15] are predicated on a congressional intention not to leave a subject completely unregulated prior to the administrative determination. But here Congress did not intend to allow the states to create exceptions to the broad provisions of the federal statute (compare Section 10 (a)). Moreover, the National Board has long since exercised its jurisdiction over the subject matter of employer-supervisor relationships.

II

SECTION 4 OF THE FLORIDA ACT IS INCOMPATIBLE WITH THE NATIONAL LABOR RELATIONS ACT

Section 4 of the Florida Act prohibits any person from acting as a "business agent" in the State of Florida without having procured a license from state authorities. The term "business agent," as defined in Section 2, subsection (2) of the Act, means "any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any 'labor

[15] *Welch Co.* v. *New Hampshire*, 306 U. S. 79; *Eichholz* v. *Public Service Commission*, 306 U. S. 268; *Mintz* v. *Baldwin*, 289 U. S. 346; *Northwestern Bell Telephone Co.* v. *Nebraska State Ry. Commission*, 297 U. S. 471.

organization' in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees." Section 4 further provides that no person shall be licensed to act as a business agent "(1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character * * *" Applications for licenses are to be held by the Secretary of State for thirty days, and then submitted to a board for determination; licenses are to be obtained annually. Any person who acts as a business agent "without having obtained and possessing a valid and subsisting license" (Section 9 (6)) is, by Section 14 of the Act, rendered liable upon conviction to fine and imprisonment. In addition, as the instant case demonstrates (*supra*, pp. 6–7), unlicensed persons may be enjoined from acting as "business agents."

Clause (b) of the definition of "business agent" describes all persons who bargain for employees, inasmuch as anyone who bargains would be soliciting or receiving rights or privileges for employees. In the light of this definition, Section 4 prohibits any person who acts for compensation from bar-

gaining collectively until he has been granted a state license. Although licenses are required only of individuals and not of labor organizations, an individual may be a representative, and organizations can act only through individuals. The section thus differs from the Texas statute involved in *Thomas* v. *Collins*, decided January 8, 1945, which did not condition the right to collective bargaining but only the right to solicit members.[16]

The National Labor Relations Act guarantees employees the right to bargain collectively through representatives of their own choosing (Section 7). "Representative" is defined to include "any individual or labor organization" (Section 2 (4)). Employers are required to bargain with the representatives chosen by a majority of the employees (Sections 8 (5) and 9).

We think that this Florida restriction upon collective bargaining is incompatible with the national statute because of three provisions which taken separately, and even more clearly in combination, impair the right to collective bargaining guaranteed by the national Act.

(1) In the first place, and most importantly, the Florida Act would prohibit employees from bargaining through a representative whom the employees had a right to select under the national Act, and with whom the employer was bound to deal. The restriction which Section 4 imposes

[16] *Thomas* v. *Collins* is also discussed at p. 30, *infra*.

constitutes a regulation of bargaining itself, inasmuch as it limits the class of those who may bargain." In *Matter of Eppinger & Russell Co.*, 56 N. L. R. B. 1259, the employer sought to justify his refusal to bargain with an authorized representative of a labor organization which the Board had previously certified pursuant to Section 9 (c) on the ground that the union representative had not obtained a license as required by the Florida Act and, therefore, could not lawfully engage in collective bargaining. Addressing itself to the question "whether Congress meant that the duty of employers to bargain, as provided in Section 8 (5) of the Act, should turn on the requirements of State legislation," the Board pointed out that while "No doubt Congress could have so provided, even though this would have subjected the enforcement of legislation national in scope to the varied and perhaps conflicting provisions of State enactments; * * * we find nothing in the language of the Act or its legislative history which warrants the belief that Congress in fact did so provide." The Board therefore concluded, following the familiar rule of *Hines* v. *Davidowitz*, 312 U. S. 52, 66–68, *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, *Napier* v. *Atlantic C. L. R. Co.*, 272 U. S. 605, and similar cases, that the

[17] It thus differs from the denial of the right to bargain as a sanction in enforcing a regulation substantively valid. As to such an interference with the federal right, see Point III, pp. 32–44, *infra*.

"State law must yield before the paramount authority of Congress expressed in a valid and applicable Federal law."

The State has suggested (Br. in opp. p. 12) that there is no interference with the national Act because Section 4 does not give an employer the right to refuse to bargain or to otherwise comply with the National Labor Relations Act, or the Board's orders thereunder, because a business agent of the employees' union has not qualified under the State Act." But the section, with the penalties contained in Section 14, subjects any employee representative who bargains without the license to fine and imprisonment. The bargaining contemplated by the federal Act [18] is a two-sided process which can be destroyed just as thoroughly by a prohibition directed to the labor representative as by an order to the employer. The resultant interference with compliance with Section 8 (5) is the same in either event.

(2) The Florida law provides that the Secretary of State shall hold applications for licenses as business agents for thirty days to permit the filing

[18] Other federal statutes also manifest the congressional policy of encouraging employees to bargain collectively through representatives of their own choice. See the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 102; Railway Labor Act, 48 Stat. 1185, 45 U. S. C. § 152. Although the Florida act exempts "railway labor organizations" (Sec. 15), it does not exempt organizations of employees of air carriers covered by Title II of the Railway Labor Act (49 Stat. 1189, 45 U. S. C. § 181, *et seq.*).

of objections, and that thereafter the application be submitted to a Board composed of the Governor and two other officials. This will undoubtedly mean that a period considerably longer than thirty days will be necessary before an application is passed on. During this time, collective bargaining with or through the applicant would be unlawful, even though it might be required by the national statute.

The purpose of federal legislation requiring collective bargaining is to prevent labor disputes obstructing commerce. When disputes arise, there must be no artificial barrier to settlement if this object is to be achieved; in particular, it is important that bargaining be promptly commenced. Even if a licensing requirement would be valid if the license could be secured promptly and without such delay as would seriously interfere with the bargaining process, the Florida statute is not of that sort. In the case of a newly chosen representative or new union official designated to participate in the bargaining and thus not previously licensed, the Florida act necessitates a delay of at least one month before they may act. This impediment obstructs in a substantial sense the bargaining which the National Labor Relations Act requires.

(3) The Florida statute limits the class of persons to whom rights to bargain may be granted. Licenses may not be granted convicted felons, persons not of good moral character, or persons

who have not been both citizens and residents of the United States during the ten years preceding the application. If we assume that a State has the power to exclude some types of persons from those whom employees may designate as bargaining agents, a limitation apparently not contemplated in the national Act's inclusive definition,[19] its power to do so must depend upon the extent of the interference with the policy of the national statute which will be produced by the exclusion, as compared to the local interest served. Cf. *Parker* v. *Brown*, 317 U. S. 341, 362. Under this test, the felony restriction might stand, and also that as to moral character, although the validity of the latter might depend on how that very general phrase is construed. And conceivably, the State might require business agents to be citizens. Cf. *Truax* v. *Raich*, 239 U. S. 33, with *Pearl Assurance Co.* v. *Harrington*, 313 U. S. 549, affirming 38 F. Supp. 411 (D. Mass.). But the prohibition as to citizens of less than ten years standing, and as to all citizens who have not resided in the United States during the preceding ten years would appear to restrict the employees' field of selection without any observable benefit to the people of Florida. We see no reasonable basis for assuming that all persons who have been American citizens for less than ten years are not to be trusted to act as labor representatives. And the same is true as to natural-born citizens, and

[19] See Section 2 (4), *supra*, p. 25.

those naturalized more than ten years in the past, who may have happened to reside in a foreign country (i. e., Canada, Mexico, England, as well as other nations) at any time within the preceding ten years. No such conditions were thought necessary by Congress.

In *Thomas* v. *Collins*, decided January 8, 1945, a majority of the Court were of the view that Section 5 of the Texas law involved in that case and the application there made of it did not conflict with the National Labor Relations Act (Slip-sheet pp. 19–20). That section merely required the obtaining of an identification card from the Secretary of State before soliciting members. It did not require a license prior to engaging in collective bargaining. It did not provide for at least a month's delay in the issuance of licenses. It did not bar classes of law abiding citizens from obtaining licenses.[20] Indeed the State authorities interpreted the Act as giving the Secretary of State only ministerial power (Op. slipsheet pp. 7, 16, 19).

In all of these respects the Florida law impedes collective bargaining, whereas the Texas law did not. The present case is thus not similar to *Thomas* v. *Collins*. It would appear, on the other hand, to come within the reservation recognized in the Court's opinion in *Allen-Bradley Local* v.

[20] Section 4a of the Texas law prohibited only convicted felons or aliens from being labor union officers or organizers.

Wisconsin Employment Relations Board, 315 U. S. 740, a decision upholding the provisions of the Wisconsin Act prohibiting violence by employees. The Court there stated that (315 U. S. at 751):

> * * * If the order of the state Board affected the status of the employees, or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise. * * *
>
> * * * It has not been shown that any employee was deprived of rights protected or granted by the federal Act or that the status of any of them under the federal Act was impaired.

The opinion also declared (p. 750):

> * * * And we fail to see how the inability to utilize mass picketing, threats, violence, and the other devices which were here employed impairs, dilutes, qualifies or in any respect subtracts from any of the rights guaranteed and protected by the federal Act. Nor is the freedom to engage in such conduct shown to be so essential or intimately related to a realization of the guarantees of the federal Act that its denial is an impairment of the federal policy.

We think that Section 4 of the Florida law definitely impairs rights granted by the National Labor Relations Act, and that, accordingly, insofar as it applies to labor relations covered by the national statute, it is invalid.

III

THE METHOD OF ENFORCEMENT PROVIDED TO IMPLEMENT SECTION 7 OF THE ALABAMA ACT AND SECTION 6 OF THE FLORIDA ACT IS INCOMPATIBLE WITH THE NATIONAL LABOR RELATIONS ACT

The Alabama statute provides that a labor organization "functioning" in the state must comply with certain conditions set forth in Section 7 of the Act (R. 334). These conditions consist of the filing of a copy of its constitution and by-laws and those of its parent organization with the State Department of Labor. In his brief in *American Federation of Labor* v. *McAdory* in the court below the Attorney General of Alabama construed the statute as prohibiting labor organizations from functioning or doing business in Alabama unless and until they have complied with those conditions.[21] The term "functioning," as construed by the Supreme Court of Alabama (No. 588; R. 336, cf. 354–355), comprehends all activity by a labor organization "for the promotion of the interests of its members" including collective bargaining and the presentation of grievances. Sec-

[21] The Attorney General took the position that while the statute imposed no prior restraint upon the *formation* of any labor organization, once such an organization has been formed "it, as an organization, may not function or do business within the State of Alabama without first filing with the Department a copy of any constitution and by-laws which might be adopted by it" (Brief on Behalf of Appellees in the Supreme Court of Alabama, pp. 23–24).

tion 7 further provides that a labor organization "functioning" within Alabama must file annual reports giving specified information. We assume, therefore, that if a labor organization which had not complied with the conditions set forth in Section 7 engaged in collective bargaining in the State of Alabama it would be deemed thereby to have violated the Act. Section 18 of the statute provides fines and imprisonment for any such violation.

The application made of the Florida Act indicates that it likewise is construed as prohibiting labor organizations from "operating" and "functioning" in that state unless they have complied with the reporting requirements set forth in Section 6, and that labor organizations which have not complied with these provisions become liable to the penalties of fine, and, in the case of union officials, imprisonment, set forth in Section 14 of the Act if they engage in collective bargaining. In the *Hill* case, No. 811, the Supreme Court of Florida upheld an injunction which prohibited the petitioning union "from functioning and operating as a labor organization" (R. 19, 26–35) until it complied with the requirements of Section 6. And, it is our understanding that the courts of Alabama would also enjoin labor organizations which have not complied with the conditions set forth in Section 7

of the Alabama Act from "functioning."[22] Moreover, on the assumption that under these statutes non-complying labor organizations cannot lawfully engage in collective bargaining, it would appear that collective agreements consummated by such organizations would be deemed "void" and unenforceable in the state courts.[23]

We do not challenge the substantive filing and reporting requirements, as construed by the state authorities, of Section 7 of the Alabama and Section 6 of the Florida statutes. Nor, in view of the decision of the Court in *Thomas* v. *Collins*, No. 14, this Term, decided January 8, 1945,[24] do we question the authority of the states to enforce

[22] See *State* v. *Bynum*, 243 Ala. 138, 9 So. (2d) 134; *Try-Me Bottling Co.* v. *State*, 235 Ala. 207, 178 So. 231; *State* v. *Ellis*, 201 Ala. 295, 78 So. 71. See also, *United States* v. *American Bond & Mortgage Co.*, 31 F. (2d) 448 (N. D. Ill.), aff'd, 52 F. (2d) 318 (C. C. A. 7).

[23] Both the Supreme Court of Alabama and the Supreme Court of Florida analogized the imposition of conditions upon the functioning of labor organizations in Sections 7 and 6, respectively, to the licensing of real estate brokers (No. 588, R. 337; No. 811, R. 29). Contracts made by unlicensed brokers are uniformly held "void" and unenforceable by the state courts. *Knight* v. *Watson*, 221 Ala. 69, 70, 127 So. 841; *Marx* v. *Lining*, 231 Ala. 445, 448–449, 165 So. 207; cf. *Whitehead* v. *Coker*, 16 Ala. App. 165, 76 So. 484, 485–486; *Sunflower Lumber Co.* v. *Turner Supply Co.*, 158 Ala. 191, 48 So. 510. Cf. *Hooper* v. *California*, 155 U. S. 648.

[24] The opinion stated that a majority of the Court was not persuaded that the Texas statute there involved or its application was inconsistent with the National Labor Relations Act (slipsheet, pp. 19–20).

such requirements by making unlawful union activity of various kinds—i. e., signing up members by paid organizers, collecting dues, etc.—absent compliance with such substantive filing and reporting requirements. On the other hand, in so far as employees engaged in industries affecting interstate commerce and thus within the coverage of the National Labor Relations Act are concerned, state interference with the actual collective bargaining process stands, we believe, on a different basis. And this would seem to be true whether such interference takes the form of a prohibition of collective bargaining until stipulated conditions precedent are satisfied, rendering such bargaining illegal, or voiding contracts resulting from such bargaining. This problem, of course, was not presented to or decided by the Court in the *Thomas* case. That case merely stands for the proposition that a state statute which required paid labor union organizers to obtain registration cards before soliciting employees to join a union was not in conflict with the National Labor Relations Act, and that, so far as the National Act is concerned, solicitation without compliance with the registration requirement could be enjoined. The Texas statute there involved did not undertake to regulate the collective bargaining process or to enjoin the exercise of collective bargaining rights. Its impact upon the

operation of the federal statute was therefore far less direct than that of the Alabama and Florida statutes in issue here. Only if the Texas statute had provided, as it did not, that authorization or membership cards procured by an unregistered organizer were "void" and could not be considered by the National Labor Relations Board in determining whether a labor organization had been selected by the employees as their exclusive bargaining representative would it have posed a problem analagous to the instant cases.

Section 1 of the National Labor Relations Act declares it to be the policy of the United States to encourage "the practice and procedure of collective bargaining." Section 8 (5), which imposes upon employers the only affirmative duty provided by the Act, requires an employer "to bargain collectively with the representatives of his employees". Section 9 (a) provides that representatives selected by the majority of the employees within an appropriate unit shall be the exclusive representatives of all the employees within such unit; Section 9 (b) and (c) equip the national Board with adequate authority to determine, where necessary, the appropriate unit and the exclusive representatives, if any. By Section 10 (a), the Board's power to prevent any person from engaging in any unfair labor practice is declared to be "exclusive" and not to be affected by any other means of "adjustment or prevention"

established by "law" or otherwise. It is true that the national Act does not preclude the states from enacting various types of measures regulating union and employee conduct in labor disputes. *Allen-Bradley Local* v. *Wisconsin Board,* 315 U. S. 740, 748–749. But the Act on its face makes the employer's obligation to bargain with the majority-chosen representative unconditional; nor does anything in the Act limit the Board's authority in determining and certifying bargaining representatives to those approved by state authority. Likewise, nothing in the legislative history points in this direction. Thus, Section 8 (5), like other sections of the national Act, provides another illustration of the refusal of Congress to make "the application of the federal act dependent on state law" (*Jerome* v. *United States,* 318 U. S. 101, 104; *National Labor Relations Board* v. *Hearst Publications,* 322 U. S. 111, 123).

Strongly buttressing the conclusion that collective bargaining in industries affecting interstate commerce is not to be exposed to the varying requirements of state legislation is the additional consideration that the national Act does not merely create private rights (*Amalgamated Utility Workers* v. *Cons. Edison Co.,* 309 U. S. 261). Its basis, rather, is the national interest in maintaining unobstructed the channels of interstate commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1. Thus, collective bar-

gaining must be regarded not as a private advantage but as a matter of national concern. It is a medium which Congress has deliberately chosen from among various alternatives. Under the appropriate circumstances prescribed by Section 8 (5) and 9 of the Act, an employer is required in the national interest to sit down at the conference table.

To the extent that in enforcement of their filing and reporting requirements state laws purport to suspend the right of representatives chosen by the majority of the employees within an appropriate unit to engage in collective bargaining, their immediate and direct interference with the national Act seems manifest. It is idle to suggest that the Alabama and Florida statutes prevent the union from requesting bargaining but not the employer from bargaining. Obviously, collective bargaining requires the participation of both parties, and the disqualification of one frustrates the process to the same degree as the disqualification of both. See p. 27, *supra*. Moreover, on principle it would seem that if the state can under given circumstances prevent a union from requesting bargaining, or subject it to criminal penalties if it does so, the state can at the same time impose similar disqualifications upon the employer who would become a party to the forbidden conduct. The drawing of a line short of this seems wholly illogical. *Per contra*, if the national Act requires

the employer to bargain without regard to state limitations, it would seem by the same force to preclude the state from restricting the other party to the bargaining process. Finally, it can hardly be questioned that a state policy of declaring void and refusing to enforce in its courts a collective bargaining contract which resulted from dealings between an employer and a union in default under a filing and reporting statute would directly affect both parties to the negotiations. Yet it is collective bargaining agreements which Congress has conceived to be the "effective instrument" (*H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 524) for stabilizing labor relations and safeguarding interstate commerce from interruption.

As we have just seen, if the states may enjoin or render criminal a union's participation in collective bargaining, or if they may void collective agreements, it follows that in the same circumstances the employer must be relieved of any duty under the national Act to enter into bargaining. Apart from other objections, the result would be to encumber the National Board with the duty in each case of determining whether in fact the union concerned was in default under the state law.[25]

[25] The National Labor Relations Board has already been required to deal with an employer's asserted defense that he was not required to deal with an individual not registered under Section 4 of the Florida Act. *Matter of Eppinger & Russell Co.*, 56 N. L. R. B. 1259, discussed, *supra*, p. 26.

In test cases such as these, where concededly there has been failure of compliance with the state requirements, the resolution of the question would be simple. But if the laws are sustained, it must be anticipated that in the future the question whether a union has complied may easily involve complicated issues of law and fact. Such questions, indeed, might even require the suspension of Board proceedings until the state courts had decided points in issue.[26] Clearly, any such scheme of interlacing federal-state administration is wholly at war with the expeditious determination contemplated by the national Act of controversies threatening interstate commerce.

Such frustration of the national policy need not occur if the states in framing their regulatory measures scrupulously refrain from resort to any sanction which so directly impinges upon the administration of the National Labor Relations Act.[27] True, the fining or jailing of an individual

[26] *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168; *Railroad Comm'n.* v. *Pullman Co.*, 312 U. S. 496, 499–500; *Thompson* v. *Magnolia Co.*, 309 U. S. 478, 483–484.

[27] Comparison of the sanctions utilized to enforce the state regulations with those adopted by the federal Government to ensure filing of financial reports by labor organizations pursuant to the provisions of the Revenue Act of 1943, Title 1, § 117 (a), 58 Stat. 36, 26 U. S. C. A. § 54 (f) highlights the features of the state law to which objection is here made. Unlike the state laws, the federal Act does not make it unlawful for labor organizations which fail to file the required returns to function; such organizations are free to continue

who failed to file a report or other data, or the fining of a union under similar circumstances, might indirectly bear upon collective bargaining, somewhat as the lawful imprisonment of a wrongfully discharged employee may have the effect in a particular case of rendering physically impossible his reinstatement pursuant to a Board order. But both in principle and in practical administration, there is a substantial difference between the latter type of sanction and the effort of a state directly to lay hold of the collective bargaining process.

The distinction which we urge finds support in analogous cases in this Court. For example, it is probably fair to say that in *Allen-Bradley Local* v. *Wisconsin Board,* 315 U. S. 740, decision turned upon the fact that the State Board had not purported to interfere with the status of the fourteen individuals there involved as "employees" (p. 748). As we have shown (*supra,* pp. 30–31), the opinion pointed out (p. 750) that there was nothing in that case which "impairs, dilutes, qualifies or in any respect subtracts from any of the rights guaranteed and protected by the federal [National Labor Relations] Act." The Court further observed (p. 751) that "If the order of the state

to engage in collective bargaining. The statute simply provides for a penalty to be imposed upon the persons who fail to file. Internal Revenue Code, 53 Stat. 28, 26 U. S. C. § 54 (a), (b), and 53 Stat. 62, 26 U. S. C. § 145.

Board affected the status of the employees, *or if it caused a forfeiture of collective bargaining rights,* a distinctly different question would arise" (italics ours). In the *Allen-Bradley* case, as in the instant cases, the substantive regulation was valid. There the sanction utilized for enforcement could be sustained because, unlike the situation here, it did not impinge upon the National Labor Relations Act. The recent case of *Pollock* v. *Williams*, 322 U. S. 4, dealing with the Federal Antipeonage Act, is also suggestive. The Court there recognized that states remain free under that federal act to punish fraud involving labor contracts, but insisted that in shaping such legislation they must take care, consistent with the national policy, not to make failure to labor in discharge of a debt any part of a crime (p. 24). So, likewise, we agree that a state may subject a union bargaining collectively within its boundaries to various filing and reporting requirements and may punish for failure to file or report; but we submit that, consistent with the national policy, a state may not enjoin or render illegal collective bargaining itself, or void contracts resulting from such bargaining. Similarly, in the field of state regulation under the Commerce Clause, it is familiar law that while the states may exclude foreign corporations from doing business within their borders, and may, of course, regulate such intrastate business of foreign corporations as they

permit, they may not condition their grant of the right to transact such business upon the waiver of federal rights; nor may they utilize their power to exclude such corporations as a sanction to enforce regulations beyond their constitutional power to enact.[28]

We submit, therefore, that to the extent that their enforcement is secured by means of enjoining or rendering illegal collective bargaining, or voiding contracts resulting from collective bargaining, Section 7 of the Alabama Act and Section

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[28] *Terral* v. *Burke Construction Co.*, 257 U. S. 529; *Barron* v. *Burnside*, 121 U. S. 186; *Western Union Tel. Co.* v. *Foster*, 247 U. S. 105 (state may not condition the grant of a privilege to use its streets upon the right to regulate the user's interstate business); *Conn. General Life Ins. Co.* v. *Johnson*, 303 U. S. 77; *Baltic Mining Co.* v. *Mass.*, 231 U. S. 68, 83; *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282; *Cooney* v. *Mountain States Tel. & Tel. Co.*, 294 U. S. 384. See Merrill, *Unconstitutional Conditions*, 77 U. of Pa. L. Rev. 879. So too, while the state may tax the income of federal employees (*Graves* v. *O'Keefe*, 306 U. S. 466), they cannot require such employees to obtain a state license before performing their federal functions (*Johnson* v. *Maryland*, 254 U. S. 51). And it would seem that the states could not seek to enforce payment of such taxes by prohibiting delinquents from retaining federal employment. In point also, is the relation of the states to federal patentees. Although the states may tax income derived from patents (*Fox Film Corp.* v. *Doyal*, 286 U. S. 123) *quaere* whether the states could constitutionally provide by way of sanction to insure payment that unless and until the patentee paid the tax he could not lawfully receive royalties from his licensees, or manufacture the patented article, or license others to do so.

6 of the Florida Act are inconsistent with the National Labor Relations Act.

Respectfully submitted.

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APPENDIX A

The pertinent provisions of Senate Bill 341, Acts of Alabama, 1943, No. 298 (Code 1943, Tit. 26 §§ 376 *et seq.*), are as follows:

SECTION 1. DECLARATION OF POLICY. The right to live involves the right to work. The public and working men and women must be protected. The activities of labor organizations affect the social and economic conditions of the State and the welfare of its citizens. It is declared to be the policy of this State, in the exercise of its police power and in the protection of the public interest, to promote voluntary and peaceful settlement and adjustment of labor disputes and to regulate the activities and affairs of labor organizations, their officers, agents, and other representatives in the manner and to the extent hereinafter provided.

SECTION 2. When used in this Act, the terms defined shall have the meaning here ascribed to them unless it clearly appears from the context that some other meaning is indicated: (a) "Labor Organization" or "Labor Union" shall mean every organization, association, group, union, lodge, local, branch, or subdivision thereof, whether incorporated or not, having within its membership employees working in the State of Alabama, organized for the purpose of dealing with employer or employers concerning hours of employment, rates of pay, or the tenure or other terms or conditions of employment, but such term or terms shall not include any labor organization or labor

union the members of which are subject to the Act of Congress known as the Railway Labor Act. (b) "Labor Dispute" shall include any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee, provided that this definition shall not relate to a dispute between an individual worker and his employer. (c) "Outlaw" or "Wildcat" strike shall mean any strike not authorized by vote as provided in Section 13 of this Act.

* * * * * *

SECTION 7. Every labor organization functioning in Alabama shall within sixty days after the effective date of this Act, and every labor organization hereafter desiring to function in Alabama shall, before doing so, file a copy of its constitution and its by-laws and a copy of the constitution and by-laws of the national or international union, if any, to which the labor organization belongs, with the Department of Labor, but this provision shall not be construed to require the filing of any ritual relating solely to the initiation or reception of members. All changes or amendments to the constitution or by-laws, local, national or international, adopted subsequent to their original filing must be filed with the Department of Labor within thirty days after the adoption thereof.

Every labor organization functioning in the State of Alabama and having twenty-five or more members in any calendar year

shall annually on or before February first in the next succeeding calendar year file with every member of their respective labor organizations and with the Director of the Department of Labor a report in writing showing the facts hereinafter in this section provided as of the close of business on the thirty-first day of December next preceding the date of filing. Such report shall be filed by the secretary or business agent of such labor organization and shall show the following facts: (1) The name of the labor organization; (2) the location of its principal office and its offices in Alabama; (3) the name of the president, secretary, treasurer and other officers, and business agents, together with the salaries, wages, bonuses, and other remuneration paid each, and post office address of each; (4) the date of regular election of officers of such labor organization; (5) the number of its paid up members; (6) a complete financial statement of all fees, dues, fines, or assessments levied and/or received, together with an itemized list of all disbursements, with names of recipients and purpose therefor, covering the preceding twelve (12) months; (7) a complete statement of all property owned by the labor organization, including any monies on hand or accredited to such labor organization, which said report shall be duly verified by the oath of the president, secretary, or some other regularly selected and acting officer of such labor organization having knowledge of the facts therein stated. It shall be the duty of the Director of Labor to cause to be printed and to make available to the public forms for making such report. At the time of filing each such report it shall be the duty of every such

labor organization to pay the Director of Labor an annual fee therefor in the sum of two dollars.

The Director of Labor shall receive, file and index the reports provided for in this section of this Act. The records provided for herein shall be made available by the Director of Labor in his office to the Governor of Alabama for examination.

It shall be unlawful for any fiscal or other officer or agent of any labor organization to collect or accept payment of any dues, fees, assessments, fines, or any other monies from any member while such labor organization is in default with respect to filing the annual report required in this section.

* * * * *

SECTION 16. It shall be unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional, or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional, or supervisory capacity. The provisions of this Section shall not be construed so as to interfere with or void any insurance contract now in existence and in force.

* * * * *

SECTION 18. PENALTIES: If any labor organization violates any provision of this Act, it shall be penalized civilly in a sum not exceeding one thousand dollars ($1,000.00) for each such violation to be recovered as a penalty in the Circuit Court

of the County in which the violation occurred, the action being brought in the name of the State of Alabama by the Circuit Solicitor of the Circuit in which the violation occurred, and it shall be the duty of the Circuit Solicitor of any Circuit in which any such violation occurs to institute and prosecute such action. The doing of any act forbidden or declared unlawful by the provisions of this Act, except where a penalty is specifically provided herein, or the commission of any offense herein declared to be a misdemeanor, shall constitute a misdemeanor, and shall be punishable by a fine not exceeding five hundred dollars ($500.00), or by imprisonment at hard labor for not exceeding twelve months, or both.

APPENDIX B

The pertinent provisions of House Bill No. 142, Laws of Florida, 1943, Chapter 21968, page 565 are as follows:

SECTION 1. Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

SECTION 2. The following terms, when used in this Act, shall have the meaning ascribed to them in this section:

(1) The term "labor organization" shall mean any organization of employees, local or subdivision thereof having within its membership residents of the State of Florida, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions or grievances of any kind relating to employment.

(2) The term "business agent" as used herein shall mean any person, without re-

gard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any "labor organization" in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees.

* * * * *

SECTION 4. No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or permit by filing an application under oath therefor with the Secretary of State, accompanied by a fee of One Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority to do so. The Secretary of State shall hold such application on file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all information that he may have including any objections that may have been filed to such

application to a Board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act *and are of the opinion that the public interest requires that a license or permit should be issued to such applicant,* then the Board shall by resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall expire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked. [Italicized phrase held invalid by state court.]

* * * * *

SECTION 6. Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the secretary or business agent of such labor organization and shall be in such form as the Secretary of State may prescribe, and shall show the following facts:

(1) The name of the labor organization;

(2) The location of its office;

(3) The name and address of the president, secretary, treasurer, and business agent.

At the time of filing such report it shall be the duty of every such labor organization to pay the Secretary of State an annual fee therefor in the sum of One Dollar.

* * * * *

SECTION 9. It shall be unlawful for any person:

* * * * *

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

* * * * *

SECTION 10. An action may be commenced by the Attorney General of the State on complaint of any interested party, for the suspension or revocation of the license of any business agent for the violation of any of the provisions of this Act. Said action shall be commenced only in the circuit court of the county of residence of such business agent or of the county in which such violations occurred. Such action shall be heard by the court without a jury and the rules of equity procedure shall apply in such proceedings. The court may suspend such license for such time as in its judgment is deemed best, or may revoke such license.

* * * * *

SECTION 14. Any person or labor organization who shall violate any of the provisions of this Act, shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

SECTION 15. All railway labor organizations and members thereof shall be exempt from all of the provisions of this Act as long as they are regulated by any Act or Acts of the Congress of the United States.

APPENDIX C

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and

by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 2. When used in this Act—

* * * * *

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an

employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the

purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

* * * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

U. S. GOVERNMENT PRINTING OFFICE: 1949

SUPREME COURT OF THE UNITED STATES.

No. 588.—October Term, 1944.

Alabama State Federation of Labor, Local Union No. 103, United Brotherhood of Carpenters and Joiners of America, et al., Petitioners,
vs.
Robert E. McAdory, as Solicitor of Jefferson County, Alabama, et al.

On Writ of Certiorari to the Supreme Court of Alabama.

[June 11, 1945.]

Mr. Chief Justice Stone delivered the opinion of the Court.

This case was brought in the state courts of Alabama for a declaratory judgment adjudicating the constitutional validity of certain sections of the Bradford Act, No. 298, Alabama Laws of 1943 (Code 1943, Tit. 26 §§ 376 *et seq.*). The principal question is whether petitioners' contentions are so related to any case or controversy presented by the record that this Court may appropriately pass upon them in a declaratory judgment proceeding.

Petitioners are four affiliated, unincorporated labor organizations, the American Federation of Labor, and the United Brotherhood of Carpenters and Joiners of America, which are national labor organizations, and two Alabama labor organizations, and an individual who is a citizen of Alabama and a member of petitioner, Local Union No. 103, United Brotherhood of Carpenters and Joiners of America.

Petitioners brought the present suit in the Alabama Circuit Court for Jefferson County against respondents, officers of Jefferson County, charged with the duty of enforcing the Bradford Act. They prayed a declaratory judgment that the Act as a whole and specifically §§ 7, 15, and 16, among others, are unconstitutional and void under the federal and state constitutions.

After a trial upon a stipulated statement of facts, certain affidavits and the testimony of witnesses, the circuit court held the Act as a whole, and specifically § 7 of the Act, to be valid and constitutional. It declined as "inappropriate" to make declara-

tions as to the validity of §§ 15 and 16. On appeal, petitioners assigning as error the circuit court's failure to pass upon the constitutionality of §§ 15 and 16, and to declare those sections and § 7 unconstitutional, the state supreme court held all three sections valid and constitutional. — Ala. —. We granted certiorari, — U. S. —, upon a petition which presented the contentions[1] that §§ 7 and 16 impose a prior general restraint on petitioners' freedom of speech and assembly guaranteed by the First and Fourteenth Amendments to the Constitution and conflict with the National Labor Relations Act by depriving them of rights under it; that §§ 7, 15 and 16 are an arbitrary and unreasonable exercise of the state police power which denies petitioners due process and equal protection of the laws in violation of the Fourteenth Amendment; and that §§ 15 and 16 are so ambiguous and uncertain in their requirements as to deny petitioners due process of law.

The Bradford Act is a comprehensive enactment regulating labor unions having members who are employees working in the State of Alabama. It establishes a Department of Labor under the supervision and control of a director of labor; it sets up mediation machinery for the settlement of labor disputes. It requires all labor organizations within the provisions of the Act to file with the Department various reports and financial statements and to pay filing fees. It regulates some phases of the internal affairs and activities of labor organizations, and various aspects of picketing, boycotting and striking. It imposes civil liability and criminal penalties for violation of its provisions.

Section 7 provides that "Every labor organization functioning in Alabama shall within sixty days after the effective date of this chapter, and every labor organization hereafter desiring to function in Alabama shall, before doing so, file a copy of its constitution and its by-laws and a copy of the constitution and by-laws of the national or international union, if any, to which the labor organization belongs, with the department of labor. . . . All changes or amendments to the constitution or by-laws, local, national or international, adopted subsequent to their original filing must be filed with the department of labor within thirty days after" their adoption.

[1] Under the view we take of the case it is unnecessary to determine whether petitioners have properly raised in the state courts the federal questions which they urge here with respect to §§ 15 and 16.

Section 7 further provides that "Every labor organization functioning in the State of Alabama and having twenty-five or more members," shall file annually with every member of the organization and with the Director of the Department of Labor a verified written report giving detailed information as to its name, the location of its offices, the officers of the organization, their salaries, wages, bonuses, and other remuneration, the date of the election of officers, the number of its paid up members, and a complete financial statement showing all receipts and disbursements with the names of recipients and purpose thereof, and a complete statement of the money and property owned by the organization. Section 7 also declares, "It shall be unlawful for any fiscal or other officer or agent of any labor organization to collect or accept payment of any dues, fees, assessments, fines, or any other monies from any member while such labor organization is in default with respect to filing the annual report. . . ."

Section 15 reads: "It shall be unlawful for any labor organization, any labor organizer, any officer, agent, representative or member of any labor organization, or any other person, to collect, receive or demand, . . . from any person, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege of work; provided, however, this shall not prevent the collection of initiation fees or dues."

Section 16 prescribes: "It shall be unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional or supervisory capacity. The provisions of this Section shall not be construed so as to interfere with or void any insurance contract now in existence and in force." Section 18 enacts, "If any labor organization violates any provision of this chapter, it shall be penalized civilly in a sum not exceeding one thousand dollars ($1,000.00) for each such violation. . . . The doing of any Act forbidden or declared unlawful by the provisions of this chapter . . . shall constitute a misdemeanor, and shall be punishable by a fine . . . or by imprisonment."

Infringement of freedom of speech and assembly by sections 7 and 16.

Petitioners do not deny the authority of the state to regulate labor unions. They do not contend that all their practices shown by the record or all their activities required to be reported by § 7 are within the protection of the constitutional provisions preserving the right to free speech or assembly, or that the requirement of § 7 that petitioners file reports, of itself, infringes their right of free speech. But construing the words of § 7 which provide that labor organizations "functioning" in the state shall file the prescribed statements or reports, and the further requirement that every labor organization "desiring to function" in Alabama shall, before doing so, file certain prescribed documents, petitioners attack the section as a licensing provision and assail its validity on the ground that as such it is a restraint upon their freedom of speech and assembly.

No officer or representative of the state is empowered by the terms of the section to grant or withhold a license authorizing a labor organization to function within the state. The State Supreme Court so held in this case. The argument is that compliance with § 7 is made prerequisite to the functioning of any labor organization within the state, and that one of the functions of petitioners is the exercise of their right of freedom of speech and assembly to advance the interests of labor and labor organizations by winning public support for their program, through education and dissemination of information. They say that the requirement of a license, before a labor organization can function within the state, to be secured by filing the requisite statements and reports, is an unconstitutional restraint on their right of free speech and assembly. Specifically they argue that if they fail to file any of the statements required by § 7 and afterwards function as a labor union within the state, by exercising their right of free speech and assembly, they may be subjected to the criminal penalties imposed by § 18, and may also be enjoined from so functioning by a civil suit in equity in the state courts.

In considering this objection to § 7 the Supreme Court of Alabama did not elaborate on the meaning of the terms "function" or "functioning" as used in the statute. It indicated that they embrace the conduct of the business activities of labor organi-

nations within the state, such as the assessment and collection of fines and dues, the collection of monies and their disbursement, the management of their property, the election of their officers and the appointment of their agents, and the maintenance and defense of suits in the courts. And it added "'Function' as used in this Act, simply means a labor organization, whether incorporated or not, engaged in business in this State, and in the character of business thus indicated, for the promotion of the interests of its members. True, as a part of its functioning, and a part only, the assemblage of its members for discussion is had, but this is merely incidental."

This language may be taken to suggest that assemblies of labor organizations which are incidental to their business activities are within the reach of the Act. But we are left uninformed, and, without the application of the statute by the state courts to some concrete set of facts, we are unable to say, whether the statute is to be construed as meaning that "functioning" by a labor organization which has not complied with § 7 by filing the prescribed reports is itself a violation of the Act subjecting it to cumulative penalties under § 18.

On the face of the statute failure to file the required statements or reports entails a civil and possibly also a criminal penalty. The collection of dues after such a failure is by § 7 declared to be unlawful and is therefore by § 18 made a misdemeanor. But the statute nowhere in terms makes it an offense or unlawful for a labor organization to continue otherwise to function after failing to file the required report or statement. So far as appears the Supreme Court of Alabama has not construed the penal provisions of the statute or determined that the failure of a labor organization to file the documents specified in § 7 entails any consequences other than the specified penalty for the failure to file, with a further penalty if without filing the labor organization or its officers continue to collect dues. Neither of these sanctions is asserted or shown to operate as an injunction restraining freedom of speech or assembly. Nor does it appear that the Alabama courts have held that a labor organization failing to file may be enjoined from functioning.

Moreover if "functioning" after failure to file is itself a violation we do not know whether the statute will be interpreted as penalizing a union merely for engaging in those business activi-

ties which are not contended to be within the protection of the right to free speech or, on the other hand, for holding meetings which are wholly unrelated to its business activities. In any event we are not advised, nor has the state court said, what assemblies or meetings of a labor organization are so related to its business activities as to be deemed "incidental" to them so as to be within the reach of the statute.

Obviously no decision of the constitutional issues now posed could be made in this suit, and no opinion could be written, without considering all and deciding some at least of these questions of statutory interpretation. No state court has decided them, briefs and argument offer us little aid in their solution, and no solution which we could tender would be controlling on the state courts. The record supplies us with no concrete state of facts to which the challenged sections, when construed, could be applied. For all that we know the only penalty to which petitioners may be subjected for violation of § 7 is a single penalty for failure to file the required statement or report, and their continued functioning in the state would subject them to no further penalty or restraint. And assuming that the penalties or threat of penalties of the statute may be so applied as to operate as a present restraint more than does the bare existence of the civil and criminal penalties for libel, it nowhere appears that the statutory penalties are being so threatened or applied.

It is not contended that the statute in any way restricts the freedom of assembly and speech of labor organizations after they comply with the filing requirements of the statute, and it nowhere appears that any of the petitioners are so situated that they could not comply with the statute within the period allowed by it for compliance, without incurring any penalty for noncompliance. The attack thus made on § 7 is as to the constitutionality of the section on its face, without reference to its application to any particular defined set of facts, other than those generally catalogued in the section itself. We cannot say that §§ 7 and 18 could not be so construed and applied as not to restrain petitioners' functioning in the state in the exercise of their constitutional right of free speech and assembly. We are thus invited to pass upon the constitutional validity of a state statute which has not yet been applied or threatened to be applied by the state courts to

petitioners or others in the manner anticipated. Lacking any authoritative construction of the statute by the state courts, without which no constitutional question arises, and lacking the authority to give such a controlling construction ourselves, and with a record which presents no concrete set of facts to which the statute is to be applied, the case is plainly not one to be disposed of by the declaratory judgment procedure.

The requirements for a justiciable case or controversy are no less strict in a declaratory judgment proceeding than in any other type of suit. *Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U. S. 249; *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227; *Maryland Casualty Co.* v. *Pacific Co.*, 312 U. S. 270, 273; *Great Lakes Co.* v. *Huffman*, 319 U. S. 293, 299, 300; *Coffman* v. *Breeze Corps.*, 323 U. S. 316. This Court is without power to give advisory opinions. *Hayburn's Case*, 2 Dall. 409; *United States* v. *Evans*, 213 U. S. 297, 301; *Muskrat* v. *United States*, 219 U. S. 346; *Stearns* v. *Wood*, 236 U. S. 75; *Coffman* v. *Breeze Corps.*, *supra*. It has long been its considered practice not to decide abstract, hypothetical or contingent questions, *Giles* v. *Harris*, 189 U. S. 475, 486; *District of Columbia* v. *Brooke*, 214 U. S. 138, 152; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, 355; *Electric Bond Co.* v. *Commission*, 303 U. S. 419; *United States* v. *Appalachian Power Co.*, 311 U. S. 377, 423, or to decide any constitutional question in advance of the necessity for its decision, *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 553; *Trade Mark Cases*, 100 U. S. 82, 96; *Liverpool, N. Y. & P. S. S. Co.* v. *Immigration Commrs.*, 113 U. S. 33, 39; *Burton* v. *United States*, 196 U. S. 283, 295; *Arkansas Oil Co.* v. *Louisiana*, 304 U. S. 197, 202, or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied, *Liverpool, N. Y. & P. S. S. Co.* v. *Immigration Commrs.*, *supra*, 39; *White* v. *Johnson*, 282 U. S. 367, 371; *Allen-Bradley Local* v. *Board*, 315 U. S. 740, 746-7, or to decide any constitutional question except with reference to the particular facts to which it is to be applied, *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, 554; *Corp. Comm.* v. *Lowe*, 281 U. S. 431, 438; *Continental Baking Co.* v. *Woodring*, 286 U. S. 352, 372; *Atlantic & Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412, 429-30.

A law which is constitutional as applied in one manner may, it is true, violate the Constitution when applied in another. *Field* v.

Clark, 143 U. S. 649, 694-7; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 289; *Concordia Ins. Co.* v. *Illinois*, 292 U. S. 535; *Associated Press* v. *Labor Board*, 301 U. S. 103. But "Since all contingencies of attempted enforcement cannot be envisoned in advance of those applications" this Court has felt bound to delay passing on "the constitutionality of all the separate phases of a comprehensive statute until faced with cases involving particular provisions as specifically applied to persons who claim to be injured." *Watson* v. *Buck*, 313 U. S. 387, 402. All these considerations forbid our deciding here the constitutionality of a state statute of doubtful construction in advance of its application and construction by the state courts and without reference to some precise set of facts to which it is to be applied. The declaratory judgment procedure may be resorted to only in the sound discretion of the Court and where the interests of justice will be advanced and an adequate and effective judgment may be rendered. *Great Lakes Co.* v. *Huffman*, *supra*; *Coffman* v. *Breeze Corps.*, *supra*.

Like objections are made and like questions raised with respect to § 16 which makes it unlawful for any "executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization" which admits to membership employees other than persons of these classes. The section does not define executive, administrative, professional or supervisory employees. No proceeding appears to have been brought in any state court for enforcement of the section, and we are without the aid of any authoritative construction of its provisions. The record discloses only general allegations in the words of the statute that petitioners admit to their membership both employees who are and employees who are not of those classes. The record gives no information as to the duties of such supervisory employees other than petitioner Jones. As to them the Court is thus asked to rule upon the constitutionality of a state statute which petitioners challenge as too vague and indefinite to satisfy constitutional requirements, which does not appear to have been applied or construed by the state court, upon a record which affords an inadequate factual basis for determining whether the statute is applicable to any of them, or if so whether as applied to them the statute would violate freedom of speech and assembly.

A further and conclusive ground for our declining to pass on the validity of § 16 is the ruling of the State Supreme Court that that section is inapplicable wherever it would otherwise "interfere with or void any insurance contract now in existence and in force." The record without disclosing the details shows that petitioners provide insurance benefits for their members as such, and that petitioner Jones is a member of petitioner United Brotherhood of Carpenters and Joiners of America, and as a member is entitled to such benefits. Whether and to what extent § 16 can be deemed applicable to the members of any of the other petitioners because of existing insurance arrangements does not appear. Only those to whom a statute applies and who are adversely affected by it can draw in question its constitutional validity in a declaratory judgment proceeding more than in any other. *Marye* v. *Parsons*, 114 U. S. 325; *Tyler* v. *The Judges*, 179 U. S. 405; *Turpin* v. *Lemon*, 187 U. S. 51, 60, 61; *Arizona* v. *California*, 283 U. S. 423, 463, 464; *First National Bank* v. *Tax Comm'n*, 289 U. S. 60, 65; *Ashwander* v. *Valley Authority*, 297 U. S. 288; *Anderson Nat. Bank* v. *Luckett*, 321 U. S. 233, 242.

Conflict of sections 7 and 16 with the National Labor Relations Act.

Petitioners also urge that § 7 and § 16 conflict with the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. § 151 *et seq.*, in that Alabama is likely to assert the power to enforce those sections by depriving petitioners of their right to function in the state as collective bargaining representatives under the National Labor Relations Act. They point out that the National Act, § 8(5), unconditionally requires an employer to bargain with the representatives of his employees. They contend that § 7 thus conflicts with the National Act and that the enforcement of the former tends to hinder and interfere with the performance of petitioners' functions under the National Act.

Petitioners also urge that § 16 conflicts with the National Labor Relations Act in that under its provisions, as construed and administered by the National Labor Relations Board, employees in certain industries, who exercise supervisory functions, may join and be represented by unions which also admit to their membership non-supervisory employees. Petitioners say that any labor organization which has failed to file the report as required by § 7, or which admits to its union a supervisory employee contrary to

§ 16, will be precluded from acting as a bargaining agent under the National Labor Relations Act.

Assuming as we do for present purposes that these contentions are sound, it does not follow that there is no constitutional scope for application of §§ 7 and 16. The National Labor Relations Act does not extend to all industries and all employees. It is only applicable to those employments in which strikes and labor disputes would affect interstate commerce and are found to be such by the National Labor Relations Board. *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 38-40; *Labor Board* v. *Fainblatt*, 306 U. S. 601, 604; *Polish Alliance* v. *Labor Board*, 322 U. S. 643, 647.

The record contains evidence of only the most general character that there are industries located within the state whose employees are "within the jurisdiction of the Alabama State Federation of Labor and Local No. 103, or of the other A. F. of L. unions within the class for which the complaint has been filed, which are engaged . . . in interstate commerce." There is evidence generally as to the practice of the National Labor Relations Board in certifying unions as bargaining representatives. But it nowhere affirmatively appears that any of petitioners act as bargaining representatives of employees in industries within the state which are subject to the National Labor Relations Act.

What is more important for present purposes is that it does not appear that there are any of petitioners which do not represent employees in industries which are not subject to the National Labor Relations Act. To decide the question of the alleged conflict of §§ 7 and 16 with the National Labor Relations Act and the effect of it, it would be necessary to know whether petitioners or some of them represent employees in industries not subject to the National Labor Relations Act, and the extent to which for that reason they may be rightly subject to local regulation even though they also represent employees in other industries which are subject to the National Act. The record is silent as to which of petitioners represent the one, or the other, or both. Hence we have no state of facts before us which would enable us to determine the extent to which the several petitioners may be subject to local regulation which does

not conflict with the National Act, and thus we are unable to say to what extent the challenged sections are valid or invalid under the National Act.

When a statute is assailed as unconstitutional we are bound to assume the existence of any state of facts which would sustain the statute in whole or in part. *Metropolitan Insurance Co.* v. *Brownell,* 294 U. S. 580, 584 and cases cited; *United States* v. *Carolene Products Co.,* 304 U. S. 144, 152, 153. Since petitioners or some of them are not shown to function exclusively as bargaining representatives for employees in industries subject to the National Labor Relations Act, we cannot say that §§ 7 and 16 could in no circumstances be validly applied to them. The extent to which in fact the sections are or may be so applied, and in what circumstances, does not appear. In this state of the record we are not called upon to say whether or to what extent they may be constitutionally applied.

Moreover, for reasons already stated in our discussion of the alleged infringement of freedom of speech and assembly, we cannot assume that the failure to file reports will result in the exclusion of petitioners, or any of them, from functioning in the state, or visit any consequences upon them other than the penalty for failure to file. We therefore have no question before us of a statute which has been construed to operate either by its penal sanctions or by the aid of injunction to prevent petitioners, or any of them, from functioning within the state for non-compliance with § 7. Compare *Hill* v. *Florida;* No. 811, decided this day. Nor can we say in the absence of any showing to the contrary that the filing of information returns will impose such burdens on any of petitioners as to interfere with the performance of their functions under the National Labor Relations Act in cases where that Act is applicable.

And finally, as we have pointed out, a further ground for our not considering the validity of § 16 and whether it conflicts with the National Labor Relations Act is the ruling of the State Supreme Court that that section is inapplicable wherever it would otherwise interfere with or render ineffective any existing contract of insurance. In view of this holding, it is incumbent on petitioners to show, as they have failed to do, to what extent § 16 can be taken to be applicable to any of them because of existing insurance arrangements with union members.

We can be asked to condemn a state statute as in conflict with national legislation only if the conflict is clearly shown, *Allen-Bradley Local* v. *Board, supra,* 749; *Townsend* v. *Yeomans,* 301 U. S. 441, 454, and cases cited, and only by those who show that they are adversely affected by the alleged conflict with national power. Each of the contentions which petitioners make with respect to the conflict of §§ 7 and 16 with the National Labor Relations Act could readily be adjudicated and disposed of in an adversary suit drawing in question their validity as applied to specific states of fact, in which respondents could both challenge the facts and the applicability to them of the statute. In the present suit we find that both the uncertainty as to the construction of the sections and the uncertainty as to the facts to which they are to be applied preclude the adjudication which the petitioners seek.

The validity of § 15 under the due process clause.

Section 15 makes it "unlawful for any labor organization, any labor organizer, any officer, agent, representative or member of any labor organization, or any other person, to collect, receive or demand, . . . from any person, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege of work." But it excludes from the operation of the Act the collection of "initiation fees or dues." Petitioners assert that the section applying as it does to every form of collection of money, other than initiation fees or dues, "as a work permit or as a condition for the privilege of work," prevents numerous legitimate and desirable labor union practices and hence is so harsh, arbitrary and unreasonable in its application as to infringe due process. A number of examples are given, such as union fees charged to non-union apprentices in return for their "guidance and teaching" by union members, fees charged to non-union members for participation in the benefits of existing all-union collective bargaining contracts, fees charged for the transfer from one union to another pending admission to union membership in the latter, and the like.

Although it appears that the constitutions of petitioners, or some of them, contain a provision permitting them to charge a fee to union members working in a union "jurisdiction" outside that in which they live, it nowhere appears that such fees or any

of the others specified by petitioners are being or will be charged, or that respondents or the courts have determined that they are unlawful as not being initiation fees or dues, or that any form of legal proceeding based on such a contention is contemplated. For these reasons the Supreme Court of Alabama declined to consider whether § 15 was applicable to petitioners, saying, "Whether or not certain practices to which counsel refer are to be construed as coming within the provisions of the Act are questions which will arise when the proper case is presented."

To say that the statute would be unconstitutional if applied to such exactions is not to say that the section cannot constitutionally apply to exactions which the legislature could have thought coercive, oppressive or otherwise unjust. It is not denied that labor organizations have indulged in such practices, and obviously we cannot assume in the face of the constitutional objections that they do not, or that the state could not make § 15 applicable to them. As the record presents no concrete case to which petitioners' contentions as to § 15 apply, we are unable to say whether its application in any given case not now before us would or would not be constitutional. *Liverpool, N. Y. & P. S. S. Co.* v. *Immigration Commrs., supra,* 39; *Barker Co.* v. *Painters' Union,* 281 U. S. 462, 463, 464. Determination of these questions as well as the proper construction of the section which is challenged as vague and indefinite must await its application to some specific state of facts.

Other contentions.

Only a word need be said as to various other objections not already disposed of, which have been raised but not seriously pressed. It is said that the requirement of § 7 to file information statements and reports is so burdensome on labor organizations as to deny due process of law. It is not denied but is affirmed that labor organizations are subject to regulation, *Allen-Bradley Local* v. *Board, supra,* and that in the interests of regulation the government may require information from those subject to it. *Thomas* v. *Collins,* 323 U. S. 516, 542; cf. *N. W. Bell Tel. Co.* v. *Ry. Comm'n,* 297 U. S. 471, 478; *Natural Gas Co.* v. *Slattery,* 302 U. S. 300, 306 and cases cited. It is said that in order to comply with the statute it would be necessary for each union, regardless of its size and finances, to hire public accountants or others with

specialized knowledge of accounting practices and procedure, such as working men do not have, and that such a requirement is beyond constitutional power. But these assertions are unsupported by the record. It does not show to what extent the transactions of petitioners, or any of them, are complicated or detailed or other facts which would enable us to say that petitioners are unable to comply with the statute without expert assistance. Since petitioners' reliance is upon the burdensome operation of the statute on them, we are not bound to speculate upon the nature or extent of the burden. We can hardly make pronouncement on their contentions in a declaratory judgment proceeding where the record does not disclose the extent of the burden, if any. Whether the information demanded is so extensive, detailed, and therefore burdensome, as to pass the bounds of what the state may reasonably require can be determined only in the light of the circumstances in which the statute is to be applied.

The objection that §§ 7 and 16 of the state statute are too vague and uncertain to meet constitutional requirements is one which cannot appropriately be considered in a declaratory judgment proceeding in the federal courts, in advance of their authoritative construction by a state court. As we have said, it is the duty of the federal courts to avoid the unnecessary decision of constitutional questions. *Siler* v. *Louisville & Nashville R. Co*, 213 U. S. 175, 191; *Light* v. *United States*, 220 U. S. 523, 538; *Blair* v. *United States*, 250 U. S. 273, 279; *Crowell* v. *Benson*, 285 U. S. 22, 62, and cases cited. But the use of the declaratory judgment procedure to test the validity of a state statute for vagueness and uncertainty invites rather than avoids the unnecessary decision of the constitutional question.

Most courts conceive it to be their duty to construe a statute, whenever reasonably possible, so that it may be constitutional rather than unconstitutional. *Stephenson* v. *Binford*, 287 U. S. 251; *Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373, 379; *Screws* v. *United States*, No. 42, 1944 term, and cases cited; cf. *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101; *Ex parte Endo*, 323 U. S. 283. And the Alabama courts adhere to that rule. *Mobile* v. *Board*, 180 Ala. 489, 501; cf. *Duncan* v. *Rudulph*, 245 Ala. 175, 176; *Goodman* v. *Carroll*, 205 Ala. 305; *Cloverdale Homes* v. *Town of Cloverdale*, 182 Ala. 419. State courts, when given the opportunity by the presentation to them for decision of an actual case or controversy,

may, and often do, construe state statutes so that in their application they are not open to constitutional objections which might otherwise be addressed to them. *Cox* v. *New Hampshire*, 312 U. S. 569, 575; compare *Schuylkill Trust Co.* v. *Pennsylvania*, 302 U. S. 506 with *Schuylkill Trust Co.* v. *Pennsylvania*, 296 U. S. 113. In advance of an authoritative construction of a state statute, which the state court alone can make, this Court cannot know whether the state court, when called on to apply the statute to a defined case or controversy, may not construe the statute so as to avoid the constitutional question. For us to decide the constitutional question by anticipating such an authoritative construction of the state statue would be either to decide the question unnecessarily or rest our decision on the unstable foundation of our own construction of the state statute which the state court would not be bound to follow. *Spector Motor Co.* v. *McLaughlin*, *supra*, 105; see also *Vandenbark* v. *Owens-Illinois Co.*, 311 U. S. 538, 543; *Huddleston* v. *Dwyer*, 322 U. S. 232. Such is not the function of the declaratory judgment.

The extent to which the declaratory judgment procedure may be used in the federal courts to control state action lies in the sound discretion of the Court. See *Great Lakes Co.* v. *Huffman*, *supra*. It would be an abuse of discretion for this Court to make a pronouncement on the constitutionality of a state statute before it plainly appeared that the necessity for it had arisen, or when the court is left in uncertainty, which it cannot authoritatively resolve, as to the meaning of the statute when applied to any particular state of facts. In any event the parties are free to litigate in the state courts the validity of the statute when actually applied to any definite state of facts, with the right of appellate review in this Court. In the exercise of this Court's discretionary power to grant or withhold the declaratory judgment remedy it is of controlling significance that it is in the public interest to avoid the needless determination of constitutional questions and the needless obstruction to the domestic policy of the states by forestalling state action in construing and applying its own statutes. See *Great Lakes* v. *Huffman*, *supra*, 300, *et seq.*

The contention that the Act denies equal protection because its provisions, or some of them, have not been extended to business corporations or associations or to labor organizations which are

subject to the Railway Labor Act, 45 U. S. C. § 151 *et seq.*, is without substance. The Constitution does not oblige a state to regulate or reform all types of associations and organizations, or none. It may begin with such as in its judgment most need regulation. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Bunting* v. *Oregon*, 243 U. S. 426; *Sproles* v. *Binford*, 286 U. S. 374, 396; cf. *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400, and cases cited. And for this reason it may exclude from regulatory measures organizations which it has reason to believe are already appropriately regulated by either state or national legislation. *Ziffrin, Inc.* v. *Reeves*, 308 U. S. 132, 140; cf. *Union Bank & Trust Co.* v. *Phelps*, 288 U. S. 181, 186.

We would not have granted certiorari to review so unsubstantial a question, and all the other issues, as presented by the record now before us, are, for reasons which we have given, inappropriate for decision in a declaratory judgment proceeding. The writ of certiorari will therefore be

Dismissed.